Chapter 1

INTRODUCTION

CONSTITUTIONAL LAW is the study of the maintenance of the proper balance between authority as represented by the three inherent powers of the State and liberty as guaranteed by the Bill of Rights. It is error to suppose that this subject suggests the unjustified ascendancy of authority over liberty as this might result in tyranny or the unwarranted primacy of liberty over authority as this would result in anarchy. The true role of Constitutional Law is to effect an equilibrium between authority and liberty so that rights are exercised within the framework of the law and the laws are enacted with due deference to rights. It is best that the student appreciate this at the threshold, before he enters the fascinating world of Constitutional Law.

The fundamental powers of the State are the police power, the power of eminent domain, and the power of taxation. Among the safeguards in the Bill of Rights are the right to due process and equal protection, the prohibition against unreasonable searches and seizures, freedom of expression, the impairment clause, and the guarantees against injustice to the accused. These powers and rights countercheck but are not necessarily hostile to each other. They have a common objective: co-existence. Their ultimate goal is the same: a well-ordered society based on the inviolability of rights which, although they may not be curtailed arbitrarily, may nevertheless be regulated for the common good.

This work will deal first with each of the three inherent powers. This is fitting as the recognition of authority is a condition *sine qua non* for the proper enjoyment; of liberty, with the common weal as the criterion. Then it will proceed to the examination of the different provisions in Article III of the Constitution, more commonly known as the Bill of Rights. Once authority is established, it is necessary to define and limit its reach, lest regulation become encroachment and the pristine purity of rights is debased by naked power.

Before everything else, however, a short background study on the basic principles governing constitutions in general, their nature, classification, amendment or revision, and interpretation shall be presented. The adoption of the present Constitution of the Philippines in 1987, together with the recent pertinent decisions of the Supreme Court, shall also be reviewed.

Chapter 2

THE NATURE OF THE CONSTITUTION

Definition

A CONSTITUTION, according to Cooley, is "that body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised."[1] This definition is comprehensive enough to cover the written and the unwritten Constitutions.

With particular reference to the Constitution of the Philippines, the more appropriate description is that given by Justice Malcolm, who speaks of it as "the written instrument enacted by direct action of the people by which the fundamental powers of the government are established, limited and defined, and by which those powers are distributed among the several departments for their safe and useful exercise for the benefit of the body politic."[2]

Purposes

"The purpose of the Constitution is to prescribe the permanent framework of a system of government, to assign to the several departments their respective powers and duties, and to establish certain first fixed principles on which government is founded."[3]

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[1] Const. Limitations, 4.

[2] Phil. Constitutional Law, 6.

[3] 11 Am. Jur. 606.

It should be stressed that when it comes to certain basic individual rights, such as religious freedom, it is not the Constitution that creates or confers them. The correct view is that the Constitution merely recognizes and protects these rights and does not bring them into existence.

The Constitution is not "the origin of private rights; it is not the fountain of law nor the incipient state of government; it is not the cause but the consequence of personal and political freedom."[4]

Supremacy of the Constitution

The Constitution is the basic and paramount law to which all other laws must conform and to which all persons, including the highest officials of the land, must defer. No act shall be valid, however noble its intentions, if it conflicts with the Constitution. The Constitution must ever remain supreme. All must bow to the mandate of this law. Expediency must not be allowed to sap its strength nor greed for power debase its rectitude. Right or wrong, the Constitution must be upheld as long as it has not been changed by the sovereign people lest its disregard result in the usurpation of the majesty of law by the pretenders to illegitimate power.[5]

Classification

Constitutions are classified into written or unwritten, evolved or enacted, and rigid or flexible.

A written constitution is one whose precepts are embodied in one document or set of documents. An unwritten constitution, on the other hand, consists of rules which have not been integrated into a single, concrete form but are scattered in various sources, such as statutes of a fundamental character, judicial decisions, commentaries of publicists, customs and traditions, and certain common law principles.

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[4] Watson, 108.

[5] Cruz, Phil. Pol. Law, 1987, p. 11.

A conventional constitution is an enacted constitution, formally "struck off" at a definite time and place following a conscious or deliberate effort taken by a constituent body or ruler. A cumulative constitution, by contrast, is the result of political evolution, "not inaugurated at any specific time but changing by accretion rather than by any systematic method."[6]

A rigid constitution is one that can be amended only by a formal and usually difficult process whereas a flexible constitution is one that can be changed by ordinary legislation.

The Constitution of the Philippines is written, conventional and rigid.

Essential Qualities of the Written Constitution

A good written constitution must be broad, brief and definite.

It must be broad not only because it provides for the organization of the entire government and covers all persons and things within the territory of the State but more so because it is supposed to embody the past, to reflect the present and to anticipate the future. The constitution must be comprehensive enough to provide for every contingency. It has been said that the constitution is "not only the imprisonment of the past but the unfolding of the future," to which it may be added that it is also the fulfillment of the present.

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[6] 16 CJS 21.

It must be brief and confine itself to basic principles to be implemented with legislative details more adjustable to change and easier to amend. Otherwise, the constitution would be a prolix and voluminous codification inaccessible to the understanding or even only the interest of the people and unable to adapt readily to changing conditions because of the difficulty of its amendment.

It must be clear or definite lest ambiguity in its provisions result in confusion and divisiveness among the people, and perhaps even physical conflict. The exception is found only in those cases where the rules are deliberately worded in a vague manner, like the due process clause, to make them more malleable to judicial interpretation in the light of new conditions and circumstances.

Essential Parts of the Written Constitution

A good written constitution contains three essential substantive parts. These are known as the constitution of *liberty,* the constitution of *government,* and the constitution *of sovereignty.*[7]

The first consists of a series of prescriptions setting forth the fundamental civil and political rights of the citizens and imposing limitations on the powers of government as a means of securing the enjoyment of those rights.[8] These are found principally in Article III of our Constitution, and also in Articles II, IV, V, and XII.

The second consists of a series of provisions outlining the organization of the government, enumerating its powers, laying down certain rules relative to its administration, and defining the electorate.[9] These are found in Articles VI to XI of our Constitution.

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[7] Garner, Introduction to Political Science, 397.
[8] *Ibid.*

The third consists of the provisions pointing out the mode or procedure in accordance with which formal changes in the fundamental law may be brought about.[10] These are found in Article XVII of our Constitution.

Permanence of the Constitution

One advantage of the written, conventional and rigid constitution is its permanence, or its capacity to resist capricious or whimsical change dictated not by legitimate needs but only by passing fancies, temporary passions or occasional infatuations of the people with ideas or personalities. "A Constitution must be firm and immovable, like a mountain amidst the strife of storms or a rock in the ocean amidst the raging of the waves."[11] Such a constitution is not likely to be easily tampered with to suit political expediency, personal ambitions or ill-advised agitation for change.

But the very virtue of permanence may at the same time be a disadvantage where the written constitution is unable to adjust to the need for change justified by new conditions and circumstances. The difficulty itself of the amending process may be responsible for the delay in effecting the needed change and thus cause irreparable injury to the public interest.

In such a situation, the written constitution will become an impediment rather than a spur to progress, a treadmill to the nation seeking to liberate itself from the shackles of obsolete rules no longer conformable to their needs and aspirations. Where this happens, the people may have to resort to a violation of the provisions of the permanent constitution; and if they cannot make a new constitution, they will have to make a revolution.[12]

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[9] *Id.*

[10] *Id.*

[11] Vanhorne v. Dorrance, 1 L., ed. 391.

Interpretation

The constitution, like statutory enactments, should be read in accordance with the usual rules on interpretation and construction. Chief among these is the canon that it should be interpreted in such a way as to give effect to the intendment of the framers. This intention is discoverable either in the document itself or through the use of extrinsic aids, such as the records of the constitutional convention.

One recurrent question in this regard is whether the constitution should be interpreted only in the light of conditions obtaining at the time of its adoption or according to the changes inevitably transpiring in the history of the nation. Should the constitution be petrified or progressive? The answer is obvious: the constitution must change with the changing times lest it impede the progress of the people with antiquated rules grown ineffective in a modern age. As eloquently put by Justice Winslow, "The political or philosophical aphorism of one generation is doubted by the next and entirely discarded by the third. The race moves forward constantly, and no Canute can stay its progress."[13]

Of particular importance also is the rule that, in case of doubt, the constitution should be considered self-executing rather than non-self-executing; mandatory rather than directory; and prospective rather than retrospective.

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[12] Ex Parte Milligan, 4 Wall. 2.

[13] Borgnis v. Falk Co., 147 Wis. 327.

A self-executing provision is a rule that by itself is directly or indirectly applicable without need of statutory implementation. Examples are the provisions found in the Bill of Rights, which may be invoked by proper parties independently of or even against legislative enactment. Thus, in *Collector of Customs v. Villaluz*,[14] the Supreme Court held that judges derive directly from Article III, Section 2, of the Constitution the authority to conduct preliminary investigations to determine probable cause for the issuance of a search warrant or warrant of arrest, which power may not be withdrawn or restricted by the legislature. A similar observation has been made in a number of cases concerning the President's power of control over all the departments as directly conferred upon him by Article VII, Section 17.

A non-self-executing provision is one that remains dormant unless it is activated by legislative implementation. An example is Article II, Section 4, which provides that in the fulfillment of the prime duty of defending the State "*all citizens may be required* under conditions provided by law *to render personal military or civil service.*" Such a requirement cannot be imposed until and unless the legislature so wills, through the passage of a law specifying the conditions. Another example is Article IV, Section 3, providing that "*Philippine citizenship may be lost or reacquired* in the manner provided by law." This provision does not cause the loss or recovery of citizenship. It is the implementing statute that will.

Unless the contrary is clearly intended, the provisions of the constitution should be considered self-executing, as a contrary rule would give the legislature discretion to determine when, or whether, they shall be effective. These provisions would be subordinated to the will of the lawmaking body, which could make them entirely meaningless by simply refusing to pass the needed implementing statute.

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[14] 71 SCRA 356.

Implementation may, however, be imposed as a duty upon the legislature by mandatory language of the constitution. For example, when Article X, Section 19, provides that "*the first Congress elected under this Constitution shall, within eighteen months from the time of the organization of both Houses, pass the organic acts for the autonomous regions in Muslim Mindanao and the Cordilleras,*" the legislature could not unduly delay creation of the body. While it is doubtful if *mandamus* would have been available against it, public opinion, if anything else, compelled it to act.

Again in the absence of a clear showing of a contrary intention, the provisions of the constitution should be regarded as mandatory. Otherwise, the fundamental law would have no more force and prestige than a set of directions which the government and the people would be free to disregard. "As a rule, therefore, whenever the language used in the Constitution is prohibitory, it is to be understood as intended to be a positive and unequivocal negation; and whenever the language contains a grant of power, it is intended as a mandate, not a mere direction."[15]

Finally, it should be observed that the provisions of the constitution should be given only a prospective application unless the contrary is clearly intended. Were the rule otherwise, rights already acquired or vested might be unduly disturbed or withdrawn even in the absence of an unmistakable intention to place them within the scope of the constitution.

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[15] Black, Constitutional Law, pp. 20-21.

Amendment or Revision

Change in the constitution may be effected by a mere modification in its interpretation by the courts of justice. Where the provisions of the constitution are ambiguously worded—perhaps deliberately so—judges may read out of them, in the light of altered conditions, meanings that at an earlier time were considered heretical.

One illustration will suffice. In *People v. Pomar,*[16] decided in 1924, our Supreme Court declared unconstitutional a law granting maternity leave privileges to female employees on the ground that it impaired the obligation of contracts. At present, however, although the impairment clause has not undergone any change in language since then, such privileges are a commonplace. Social legislation has been sustained under the expanded concept of the police power as a valid limitation of the freedom of contract.

There are provisions of the Constitution, though, which are not as malleable to judicial interpretation, what Cooley calls the "iron rules," because they cannot be altered except by formal amendment. Examples are the provisions for the age qualifications of certain officers or for their term of office. The composition of the Commission on Audit, to take another illustration, cannot be reduced or increased by a mere court decision.

Modification of such provisions may be effected either by *amendment* or *revision* as provided in Article XVII.

Amendment means isolated or piecemeal change only, as distinguished from revision, which is a revamp or rewriting of the whole instrument.

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[16] 46 Phil. 440.

Thus, there was mere amendment of the Constitution of 1935 when the term of office of the President of the Philippines was changed from six to four years. But there was a revision when the Constitutional Commission of 1986 rewrote the Marcos charter and produced what is now the Constitution of 1987.

Procedure

Two steps are involved in the amendment or revision of our Constitution. The first is the *proposal* and the second is the *ratification.*

(1) Proposal

The proposal is generally made either directly by the Congress or by a constitutional convention.[17]

Where what is intended is a mere amendment or change of particular provisions only, the proposal is better made by direct legislative action. In this case the vote of at least three-fourths of all the members of the Congress shall be needed.[18] This method will avoid the unnecessary expenditure of public funds and time that the calling of a constitutional convention will entail.

But if what is envisioned is the overhaul of the entire Constitution, it will be advisable to entrust the task to a constitutional convention, which will have more time, opportunity and presumably also the needed expertise to discharge it.

The call for a constitutional convention may be made by a vote of two-thirds of all the members of the Congress.[19] If they cannot make up their mind, the question of whether or not to call the constitutional convention shall be thrown by them to the people themselves, by at least a majority vote.[20]

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[17] Art. XVII, Sec. 1, Constitution.

[18] *Ibid.*

[19] Art. XVII, Sec. 3, *ibid.*

This last alternative is a plainly absurd procedure that permits the members of the Congress to authorize the waste of public funds by calling on their constituents to decide a question that is essentially addressed to the legislators themselves. In effect, they are allowed to "pass the buck" simply because they are unable to agree on the decision the people expect them to make.

At any rate, whatever the nature of the change contemplated, the choice of the method of proposal is discretionary upon the legislature, as held in *Occeña v. Commission on Elections.*[21]

Conformably to the ruling announced in *Imbong v. Commission on Elections*,[22] the Congress, acting as a constituent body, may with the concurrence of two-thirds of all its members call a constitutional convention in general terms only. Thereafter, the same Congress, acting this time as a legislative body, may pass the necessary implementing law providing for the details of the constitutional convention, such as the number, qualifications, and compensation of its members. This statute may be enacted in accordance with the ordinary legislative process.

A third method of proposal is allowed by Section 2 of Article XVII, which reads:

> Amendments to this Constitution may likewise be directly proposed by the people through initiative upon petition of at least twelve *per centum* of the total number of registered voters, of which every legislative district must be represented by at least three *per centum* of the registered voters therein. No amendment

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[20] *Ibid.*

[21] 104 SCRA 1.

[22] 35 SCRA 28.

> under this section shall be authorized within five years following the ratification of this Constitution nor oftener than once every five years thereafter.
>
> The Congress shall provide for the implementation of the exercise of this right.

The attempt to use this method in 1997 was struck down by the Supreme Court in *Santiago v. Commission on Elections*[22a] for lack of the necessary implementing law. The above-quoted provision, it held, was not self-executing, and Rep. Act No. 6735 provided for a local initiative only and not the national initiative required for proposing constitutional changes. This ruling was reiterated in *PIRMA v. Commission on Elections*[22b] and definitely ended the attempt to remove the term limits of the President and the members of Congress in the present charter.

It should be noted that this method applies only to amendments, not to a revision of the Constitution.

A. Position of the Constitutional Convention

There are three theories on the relative position of the constitutional convention *vis-a-vis* the regular departments of the government.

The first, as announced in *Loomis v. Jackson,*[23] holds that the constitutional convention is supreme over the other departments of the government because the powers it exercises are in the nature of sovereign powers. This is called the Theory of Conventional Sovereignty.

The second, as announced in *Wood's Appeal,*[24] considers the constitutional convention inferior to the other departments of the government since it is merely a creation of the legislature.

[22a] 270 SCRA 106.

[22b] G.R. No. 129754, Sept. 21, 1997.

[23] 6 W. Va. 613.

[24] 79 Pa. 59.

The third, as announced in *Frantz v. Autry*,[25] declares that as long as it exists and confines itself within the sphere of its jurisdiction, the constitutional convention must be considered independent of and co-equal with the other departments of the government.

The third of these theories, which is the most widely accepted, has been observed in this jurisdiction since the case of *Mabanag v. Lopez Vito.*[26]

(2) Ratification

The Constitution provides that any amendment to or revision shall be valid when ratified by a majority of the votes cast in a plebiscite held not earlier than sixty days nor later than ninety days after the approval of such change by the Congress or the constitutional convention or after the certification by the Commission on Elections of the sufficiency of the petition under Section 2.[27]

The requirement for ratification thus involves the people themselves in the sovereign act of drafting or altering the fundamental law. In the case of a mere statute, it suffices that it is enacted by their chosen representatives pursuant to their mandate. But where it is a constitution that is being framed or changed, it is imperative and proper that approval come directly from the people themselves.

Proposals to amend the Constitution must be ratified within a reasonable time after they are made because they are intended to answer present needs or correct current problems. If they are accepted only after a long delay, they may no longer serve the purposes for which they were made in the first place. Moreover, proposals should be voted upon at a time when interest in them is still rife and the electorate is still knowledgeable on the *pros* and *cons* of the issues submitted to them.

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[25] 91 Pac. 193.

[26] 78 Phil. 1.

[27] Art. XVII, Sec. 4, Constitution.

According to Judge Jameson, "an alteration of the Constitution proposed today has relation to the sentiment and felt needs of today and, if not ratified early while the sentiment may fairly be supposed to exist, it ought to be regarded as waived and not again to be voted upon unless for a second time proposed."[28]

One of the issues raised in *Gonzales v. Commission on Elections*[29] was the validity of the submission of certain proposed constitutional amendments at a plebiscite scheduled on the same day as the regular elections. Petitioners argued that this was unlawful as there would be no proper submission of the proposal to the people who would be more interested in the issues involved in the election campaign. The Supreme Court, however, declared, in interpreting Article XV of the 1935 Constitution:

> There is in this provision nothing to indicate that the election therein referred to is a special, not a general election. The circumstance that the previous amendment to the Constitution had been submitted to the people for ratification in special elections merely shows that Congress deemed it best to do so under the circumstances then obtaining. It does not negate its authority to submit proposed amendments for ratification in general elections.

Justice Sanchez, with whom Justice J.B.L. Reyes concurred, expressed a strong dissent. His argument was that, in order that the proposed amendments could be considered to have been properly submitted, "the people must be afforded opportunity to mull over the original provisions, compare them with the proposed amendments, and try to reach a conclusion as the dictates of their conscience suggest, free from the incubus of extraneous or possibly insidious influence . . . There must be a fair submission, intelligent consent or rejection." Such fair submission, he believed, would be possible only if the plebiscite were scheduled on a special date.

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[28] Constitutional Limitations, 4th ed., Sec. 535.

[29] 21 SCRA 774. See also Almario v. Alba, 127 SCRA 69.

The majority view was affirmed in *Occeña v. Commission on Elections*,[30] where the Supreme Court sustained the simultaneous holding in 1980 of the local elections and the plebiscite on the proposal to restore the retirement age of judges to seventy years.

Judicial Review of Amendments

From what has already been observed, it is clear that the question of the validity of the adoption of amendments to the Constitution is regarded now as subject to judicial review. The view announced in *Mabanag v. Lopez Vito*[31] to the effect that the question of whether or not the Parity proposal had been validly adopted in Congress was political in nature has been rejected, indeed as early as in the case of *Tañada v. Cuenco*,[32] The present doctrine allows the courts to inquire into whether or not the prescribed procedure for amendment has been observed.

The Supreme Court assumed jurisdiction in *Sanidad v. Commission on Elections*[33] over the Solicitor General's contention that the amendment of the Constitution was a political question, holding through Justice Martin as follows—

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[30] 95 SCRA 755.

[31] *Supra.*

[32] 100 Phil. 1101.

[33] 73 SCRA 333.

> The Solicitor General would consider the question at bar as a pure political one, lying outside the domain of judicial review. We disagree. The amending process, both as to proposal and ratification, raises a judicial question. This is especially true in cases where the power of the Presidency to initiate the amending process by proposals of amendments, a function normally exercised by the legislature, is seriously doubted.

Thus, the judiciary may declare invalid a proposal adopted by less than three-fourths of the members of the Congress, or a call for a constitutional convention by less than two-thirds of the legislature, or a ratification made by less than a majority of the votes cast, or a plebiscite irregularly held.

The 1987 Constitution

The Constitution of 1987 is the fourth fundamental law to govern the Philippines since it became independent on July 4, 1946.* The first was the Commonwealth Constitution, adopted in 1935, which continued by its provisions to be operative after the proclamation of the Republic of the Philippines. The second was the Constitution of 1973 which was enforced during the Marcos regime following its dubious approval and ratification at a time when the country was already under martial law. On February 25, 1986, as a result of the people power upheaval that deposed President Marcos, the new President proclaimed a Freedom Constitution, to be effective pending the adoption of a permanent constitution aimed at correcting the shortcomings of the pre-

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[*] The Constitution of the Japanese-sponsored Second Philippine Republic is deliberately excluded.

vious constitutions and specifically eliminating all the iniquitous vestiges of the past regime.

Toward this end, President Corazon C. Aquino, in Proclamation No. 9, created a Constitutional Commission composed of fifty members to be appointed by her and charged it to frame a new charter not later than September 2, 1986. All but one of those appointed accepted and immediately undertook their mission under the Presidency of Justice Cecilia Muñoz-Palma, formerly of the Supreme Court. The members came from various sectors and represented diverse persuasions, which is probably one reason why they could not meet their deadline and were able to approve the final draft of their handiwork only on October 15, 1986. By resolution of the Commission, it was recommended to the President that the plebiscite on the proposed Constitution be scheduled, not within sixty days as originally provided, but within three months, to give the people more opportunity to study it. Accordingly, the plebiscite was scheduled and held on February 2, 1987.

The campaign for the ratification of the proposed Constitution was led by the President herself, whose main argument was that it would restrict the powers of the Presidency as provided for in the Freedom Constitution. Opposition to the draft, while spirited, was largely disorganized and consequently ineffective. Many people, while doubtful about some of its provisions and especially of its length, which made it seem like a codification, nevertheless approved the proposed Constitution in the end because they felt it would provide the stability the country sorely needed at the time. When the votes were tallied, it appeared that 76.29% the electorate had voted to ratify, with only 22.74% against.

Suggested Reading:

Imbong v. Commission on Elections, 25 SCRA 28
Tolentino v. Commission on Elections, 41 SCRA 715
Almario v. Alba, 127 SCRA 69
Santiago v. Commission on Elections, 270 SCRA 106

Chapter 3

THE CONSTITUTION AND THE COURTS

ALTHOUGH HOLDING "neither purse nor sword," the judiciary occupies a vital and indispensable part in our system of government, for it is the ultimate guardian of the Constitution. The political departments, if only because of the nature of their powers, have a tendency to bend if not actually break the laws, sometimes for the best of motives or out of mistaken zeal, but more often because of a desire for self-aggrandizement. When they do so, the judiciary is expected to rectify the wrong and affirm its "sacred and solemn duty" to uphold the Constitution and the laws of the land.

As this role of the judiciary is particularly needed in the protection of the individual liberties guaranteed by the Bill of Rights, it is important to consider at this point the scope and limitations of the power of judicial review and, especially, the requisites of a judicial inquiry into a constitutional question.

Voting

The new rule in Article VIII, Section 4 on *en banc* cases is as follows:

> (2) All cases involving the constitutionality of a treaty, international or executive agreement, or law, which shall be heard by the Supreme Court *en banc,* and all other cases which under the Rules of Court are required to be heard *en banc,* including those involving the constitutionality, application, or operation of presidential decrees, proclamations, orders, instructions, ordi-

nance, and other regulations, shall be decided with the occurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Whereas the old rules on the declaration of unconstitutionality covered only the *"treaty or law"* under the 1935 Constitution and the *"treaty, executive agreement or law"* under the 1973 Charter, the new Constitution includes the *"treaty, international or executive agreement, law, presidential decree, proclamation, order, instructions, ordinance and other regulations"* Unfortunately, the language is rather convoluted and unnecessarily finicky.

The rule on the needed vote for a declaration of unconstitutionality is also elaborate and elongated, not to say ill-advised. While the Commonwealth Constitution called for a vote of two-thirds of the Supreme Court and the 1973 Constitution fixed the flat number of ten, the Constitution of 1987 evidently will have no truck with such simplicity. Instead, it requires for such declaration *"the concurrence of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon,"* in a masterpiece of quibbling and verbosity. Significantly, whereas under the two previous charters no less than two-thirds of the Court were needed for a declaration of unconstitutionality, now as few as *five* members of the Court can declare any of the measures mentioned above unconstitutional, this number being a majority of the quorum of eight of the fifteen-member Court.

Requisites of a Judicial Inquiry

Unlike the political departments, courts are passive instruments that can act only when their jurisdiction is invoked. It is understood, of course, that, even then, the question raised will not be entertained by them if it is political in nature. Furthermore, by virtue of a judge-made policy, no constitutional question will be heard and decided by them unless there is compliance with what are known as the requisites of a judicial inquiry.

These requisites are the following:[1]

(1) There must be an actual case or controversy;

(2) The question of constitutionality must be raised by the proper party;

(3) The constitutional question must be raised at the earliest possible opportunity; and

(4) The decision of the constitutional question must be necessary to the determination of the case itself.

(1) Actual Case

An actual case or controversy involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial adjudication. The case must not be moot or academic or based on extra-legal or other similar considerations not cognizable by a court of justice. There must be a contratriety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.

"A 'controversy' must be one that is appropriate for judicial determination. A justiciable controversy is thus distinguished from a difference or dispute of a hypothetical or abstract character or from one that is academic or moot. The controversy must be definite and concrete, touching, the legal relations of parties having adverse legal interests. It must be a real and substantial controversy admitting of specific relief through a decree that is conclusive in character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts. Where there is such a concrete case admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceedings upon the facts alleged, the adjudication of the rights of the litigants may not require the award of process or the payment of damages. And it is not essential to the exercise of the judicial power that an injunction be sought; allegations that irreparable injury is threatened are not required."[2]

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[1] Dumlao v. Commission on Elections, 95 SCRA 392.

A request for advisory opinion cannot come in the category of an actual case or controversy since the issue raised does not involve any conflict in law that has assumed the proportions of a full-blown dispute. The court in this case is being asked only to counsel and not to decide. Counseling by courts is contrary to the doctrine of separation of powers since their advice will not have the force of law but of a mere suggestion or recommendation that may be accepted or rejected at will by the department requesting it.

But where the purpose is to solicit from the court a declaratory judgment involving the interpretation of the rights and duties of a person under the provisions of a deed, will, contract, or other written instrument, or a statute or ordinance,[3] the case is deemed an actual controversy over which. the courts may validly assume jurisdiction.

In *PACU v. Secretary of Education*,[4] the petitioners challenged a regulation of the respondent requiring all private colleges and universities to first obtain a permit from the Department of Education before they could open and operate. It appeared, however, that all the petitioners had previously obtained the required permit and that they were questioning the regulation only because of the possibility that such permit might be denied them in the future. The Supreme Court declared that the case was premature as there was no showing at the time of any conflict of legal rights that would justify assumption of jurisdiction by the judiciary. The Court said that "mere apprehension that the Secretary of Education might, under the law, withdraw the permit of one of the petitioners does not constitute a justiciable controversy."

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[2] Aetna Life Ins. Co. vs. Haworth, 300 U.S. 227.

[3] Rule 64, Sec. 1, Rules of Court.

[4] 97 Phil. 806.

PHILCONSA v. Villareal[5] was a petition to compel the Speaker of the House of Representatives to produce the books of accounts of that body in which were recorded the amounts appropriated by the legislators for their allowances. Before the case could be decided, however, the 1973 Constitution became effective and the Congress of the Philippines was consequently abolished. The Supreme Court thereupon dismissed the petition, holding that the same had already become moot and academic.

In *Perez v. Provincial Board,*[6] it was held that the petitioner's claim to an appointive office was rendered moot and academic when he filed a certificate of candidacy for an elective office. And according to *Morelos v. De la Rosa,*[7] an election protest will have to be dismissed upon the expiration of the protested official's term.

(2) Proper Party

A proper party is one who has sustained or is in immediate danger of sustaining an injury as a result of the act complained of.[8] Until and unless such actual or potential injury is established, the complainant cannot have the legal personality to raise the constitutional question.

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[5] 52 SCRA 477.

[6] 113 SCRA 187.

[7] 102 SCRA 671.

[8] Ex Parte Levitt. 303 U.S. 633.

In *Tileston v. Ullmann*,[9] a physician questioned the constitutionality of a law prohibiting the use of contraceptives, upon the ground that it might prove dangerous to the life or health of some of his patients whose physical condition would not enable them to bear the rigors of childbirth. The Court dismissed the challenge, holding that the patients of the physician and not the physician himself were the proper parties.

In *Cuyegkeng v. Cruz*,[10] the petitioner challenged in a *quo warranto* proceeding the title of the respondent who, he claimed, had been appointed to the Board of Medical Examiners in violation of the provisions of the Medical Act of 1959. The Supreme Court dismissed the petition, holding that Cuyegkeng had not made a claim to the position held by Cruz and therefore could not be regarded as a proper party who had sustained an injury as a result of the questioned act.

In *Ex Parte Levitt*,[11] the petitioner, an American taxpayer and member of the bar, filed a motion for leave to question the qualifications of Justice Black who, he averred, had been appointed to the U.S. Supreme Court in violation of the Constitution of the United States. The Court dismissed the petition, holding that Levitt was not a proper party since he was not claiming the position held by Justice Black.

In *People v. Vera*,[12] the Court held that the Government of the Philippines was a proper party to challenge the constitutionality of the Probation Act because, more than any other, it was the Government itself that should be concerned over the validity of its own laws.

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[9] 318 U.S. 446.

[10] 108 Phil. 1147.

[11] 303 U.S. 633.

[12] 65 Phil. 56.

The rule before was that an ordinary taxpayer did not have the proper party personality to question the legality of an appropriation law, since his interest in the sum appropriated was not substantial enough. Thus, in *Custodio v. Senate President*,[13] a challenge by an ordinary taxpayer to the validity of a law granting backpay to members of Congress during the period corresponding to the Japanese Occupation was dismissed as having been commenced by one who was not a proper party.

Since the first *Emergency Powers Case*,[14] however, the rule has been changed and it is now permissible for an ordinary taxpayer, or a group of taxpayers, to raise the question of the validity of an appropriation law. As the Supreme Court then put it, "The transcendental importance to the public of these cases demands that they be settled promptly and definitely, brushing aside, if we must, technicalities of procedure."

In *Tolentino v. Commission on Elections*,[15] it was held that a senator had the proper party personality to seek the prohibition of a plebiscite for the ratification of a proposed constitutional amendment. In *PHILCONSA v. Gimenez*,[16] an organization of taxpayers and citizens was held to be a proper party to question the constitutionality of a law providing for certain special retirement benefits for members of the legislature.

In *Oposa v. Factoran*,[16a] a number of minors, represented by their parents, sued the Secretary of Environment and Natural Resources "to prevent the 'misappropriation or impairment' " of Philippine rainforests "and arrest the unabated hemorrhage of the country's vital life-support systems and continued rape of Mother Earth." The case was dismissed by the lower court on the ground *inter alia* that the plaintiffs were not proper parties. The Supreme Court reversed through Justice Hilario G. Davide, Jr., thus:

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[13] 42 O.G. 1243.

[14] Araneta v. Dinglasan, 84 Phil. 368.

[15] 41 SCRA 715.

[16] 15 SCRA 479.

[16a] 224 SCRA 792.

> Petitioners minors assert that they represent their generation as well as generations yet unborn. We find no difficulty in ruling that they can, for themselves, for others of their generation, and for succeeding generations, to file a class suit. Their personality to sue on behalf of succeeding generation can only be based on the personality concept of intergenerational responsibility insofar as the right to a balanced and healthful ecology is concerned.

In *Sanidad v. Commission on Elections*,[17] the Supreme Court upheld the petitioners as proper parties, thus—

> As a preliminary resolution, We rule that the petitioners in L-44640 (Pablo C. Sanidad and Pablito V. Sanidad) possess *locus standi* to challenge the constitutional premise of Presidential Decree Nos. 991, 1031, and 1033. It is now an ancient rule that the valid source of a statute—Presidential Decrees are of such nature—may be contested by one who will sustain a direct injury as a result of its enforcement. At the instance of taxpayers, laws providing for the disbursement of public funds may be enjoined, upon the theory that the expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds. The breadth of Presidential Decree No. 991 carries an appropriation of Five Million Pesos for the effective implementation of its purposes. Presidential Decree No. 1031 appropriates the sum of Eight Million Pesos to carry out its provisions. The interest of the aforenamed petitioners as taxpayers in the lawful expenditure of these amounts of public money sufficiently clothes them with that personality to litigate the validity of the Decrees appropriating said funds. Moreover, as regards taxpayers' suits, this Court enjoys that open discretion to entertain the same or not. For the present case, We deem it sound to

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[17] 73 SCRA 333.

> exercise that discretion affirmatively so that the authority upon which the disputed Decrees are predicated may be inquired into.

In *Macalintal vs. Commission on Elections,*[17a] a lawyer who questioned the Overseas Absentee Voting Act was accepted as a proper party thus:

> Taxpayers, such as herein petitioner, have the right to restrain officials from wasting public funds through the enforcement of an unconstitutional statute. The Court has held that they may assail the validity of a law appropriating public funds because expenditure of public funds by an officer of the State for the purpose of executing an unconstitutional act constitutes a misapplication of such funds.
>
> The challenged provision of law involves a public right that affects a great number of citizens. The Court has adopted the policy of taking jurisdiction over cases whenever the petitioner has seriously and convincingly presented an issue of transcendental significance to the Filipino people.

In *Lozada v. Commission on Elections,*[17b] however, a petition to compel the respondent to call special elections to fill twelve vacancies in the interim Batasang Pambansa was dismissed on the ground *inter alia* that the petitioners were not proper parties as they had only what the Supreme Court called a "generalized interest" shared with the rest of the people. A similar ruling was rendered in *Guazon v. De Villa,*[17c] where "well-meaning citizens with only second-hand knowledge of the events" were not considered proper parties to challenge the saturation drives or "zonas" being conducted by the military.

The original ruling in the case of *Kilosbayan v. Morato*[17d] admitted the petitioner, a group of concerned citizens and taxpayers, as a proper party to question the contract providing for the holding of the lotto or a national lottery. In the subsequent case involving the same parties, however, the Supreme Court, with a changed membership, held the petitioner to be without legal standing to question that contract. A similar conclusion was reached in *Osmeña v. Commission on Elections*,[17e] on the ground that the petitioner, a presidential candidate, did not show that he had been injured as a result of the ban on political commercials on radio and television. The same reason was applied against the petitioners in *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections*[17f] who were questioning the law requiring television and radio stations to allocate free time to the respondent agency.

[17a] 405 SCRA 614.

[17b] 120 SCRA 337.

[17c] 181 SCRA 623.

[17d] 250 SCRA 130.

Significantly, Article VII, Section 18, of the Constitution now allows *any citizen* to challenge the suspension of the privilege of the writ of *habeas corpus* or the proclamation of martial law.

(3) Earliest Opportunity

The rule is that the constitutional question must be raised at the earliest possible opportunity, such that if it is not raised in the pleadings, it cannot be considered at the trial, and, if not considered at the trial, it cannot be considered on appeal.

This general rule, however, is subject to the following exceptions:

(1) In criminal cases, the constitutional question can be raised at any time in the discretion of the court.

[17e] 288 SCRA 447 (1998).

[17f] 289 SCRA 337 (1998).

(2) In civil cases, the constitutional question can be raised at any stage if it is necessary to the determination of the case itself.

(3) In every case, except where there is estoppel, the constitutional question can be raised at any stage if it involves the jurisdiction of the court.[18]

(4) Necessity of Deciding Constitutional Question

The reason why the courts will as much as possible avoid the decision of a constitutional question can be traced to the doctrine of separation of powers, which enjoins upon each department a proper respect for the acts of the other departments. In line with this policy, courts indulge the presumption of constitutionality and go by the maxim that "to doubt is to sustain." The theory is that, as the joint act of the legislative and executive authorities, a law is supposed to have been carefully studied and determined to be constitutional before it was finally enacted. Hence, as long as there is some other basis that can be used by the courts for its decision, the constitutionality of the challenged law will not be touched and the case will be decided on other available grounds.

As held in *Laurel v. Garcia*,[18a] "The Court will not pass upon a constitutional question although properly presented by the record if the case can be disposed of on some other ground such as the application of a statute or general law." The same ruling was laid down in *Lalican v. Vergara.*[18b]

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[18] People v. Vera, *supra;* People v. Munar, 53 SCRA 678; Tijam v. Sibonghanoy, 23 SCRA 29.

[18a] 187 SCRA 797.

[18b] 276 SCRA 518.

In the case of *Zandueta v. De la Costa,*[19] Justice Laurel declared that such a policy did not manifest a shirking of judicial duties. In fact, he continued, if there should be no other ground available to the court for the decision of the case, then would be "the time to let the hammer fall, and heavily."

In this case, the petitioner, an incumbent judge, had accepted an *ad interim* appointment to a new court created under a law that had reorganized the judiciary by abolishing some judgeships and creating others. When his appointment was bypassed, he returned to his former court in Manila but found that the respondent had already been appointed thereto. Zandueta thereupon filed *quo warranto* proceedings against De la Costa, arguing that he had not abandoned his old court in Manila by his acceptance of the new court in Palawan. His reason was that the law creating the latter court was unconstitutional because it violated judicial security of tenure.

Although the constitutional question had been raised squarely, the Supreme Court did not find it necessary to resolve it. Its justification was another ground available to it for its decision, to wit, the common law principle of estoppel. Since under this rule a person cannot question the validity of a law under which he had previously accepted benefits, the Supreme Court held that Zandueta was estopped from impugning the constitutionality of the judiciary reorganization law.

But when in 1955 a similar law was passed by Congress and was also later assailed on the ground that it violated judicial security of tenure, the Supreme Court could not avoid ruling on the constitutional question raised. The petitioners in this case, unlike Zandueta, had not accepted new positions created by the law after it had legislated them out of their former courts. The principle of estoppel could therefore not be applied to them and the Supreme Court consequently had to decide categorically whether or not the challenged law was constitutional.[20] Similar action was taken in the later case of *De la Llana v. Alba.*[21]

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[19] 66 Phil. 615.

As stressed in *Gobenciong v. Court of Appeals,*[22] it is basic that the matter of constitutionality shall, as a rule, be considered if it is the *lis mota* of the case and raised and argued at the earliest opportunity.

Effects of Declaration of Unconstitutionality

There are two views on the effects of a declaration of the unconstitutionality of a statute.

The first is the orthodox view. Under this rule, as announced in *Norton v. Shelby,*[23] an unconstitutional act is not a law; it confers no rights; it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, inoperative, as if it had not been passed. It is therefore stricken from the statute books and considered never to have existed at all. Not only the parties but all persons are bound by the declaration of unconstitutionality, which means that no one may thereafter invoke it nor may the courts be permitted to apply it in subsequent cases. It is, in other words, a total nullity.

The second or modern view is less stringent. Under this view, the court in passing upon the question of constitutionality does not annul or repeal the statute if it finds it in conflict with the Constitution. It simply refuses to recognize it and determines the rights of the parties just as if such statute had no existence. The court may give its reasons for ignoring or disregarding the law, but the decision affects the parties only and there is no judgment against the statute. The opinion or reasons of the court may operate as a precedent for the determination of other similar cases, but it does not strike the statute from the statute books; it does not repeal, supersede, revoke, or annul the statute. The parties to the suit are concluded by the judgment, but no one else is bound.[24]

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[20] Ocampo v. Sec. of Justice, G.R. L-7918, Jan. 18, 1955.

[21] 112 SCRA 294.

[22] 550 SCRA 502 (2008).

[23] 118 U.S. 425.

The orthodox view is expressed in Article 7 of the Civil Code, providing that "when the courts declare a law to be inconsistent with the Constitution, the former shall be void and the latter shall govern." In several cases, however, it was observed that a realistic approach was eroding the general doctrine and that the actual existence of a statute prior to its declaration of unconstitutionality was an operative fact and might have consequences which could not justly be ignored.

Thus, in *Manila Motors Co. v. Flores*,[25] the plaintiff filed a complaint for the recovery of installments which fell due in 1941. The defendant pleaded prescription, 13 years having elapsed since the due date. The plaintiff argued that the prescriptive period had been suspended by the Moratorium Law, but the defendants averred that the law had been declared unconstitutional and therefore no rights could be built upon it. The Supreme Court rejected this contention and, applying considerations of equity, relaxed the operation of the general rule.

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[24] Sheppard v. Barren, 194 U.S. 553.

[25] 99 Phil. 738.

A similar conclusion was reached in *Tan v. Barrios*[25a] and, earlier, in *Republic v. Herida*[26] and *Republic v. CFI*.[27]

(1) Partial Unconstitutionality

Also in deference to the doctrine of separation of powers, courts hesitate to declare a law totally unconstitutional and, as long as they can, will salvage the valid portions thereof in order to give effect to the legislative will. Nevertheless, a declaration of partial unconstitutionality will be valid only if two conditions concur, to wit: first, that the legislature is willing to retain the valid portions even if the rest of the statute is declared illegal; and second, that the valid portions can stand independently as a separate statute.

The legislative will to this effect may be expressed in what is known as the separability clause. This usually provides that "if for any reason any section or provision of this Act is declared invalid or unconstitutional, the remainder of the Act shall not be affected by such declaration." But even without such separability clause, it has been held that if the valid portion is so far independent of the valid portion, it may be fair to presume that the legislature would have enacted it by itself if it had supposed that it could constitutionally do so.

"Enough must remain to make an intelligible and valid statute which carries with it the legislative intent. The void provision must be eliminated without causing results affecting the main purpose of the act in a manner contrary to the intention of the legislature. The language used in the invalid part of the statute can have no legal purpose or efficacy and what remains must express the legislative will independently of the void part."[28]

[25a] 190 SCRA 686.

[26] 119 SCRA 411.

[27] 120 SCRA 154.

The *Bar Flunkers Case*[29] provides an illustration of a law that was declared partly unconstitutional. The law was sustained in so far as it amended the Rules of Court prospectively. But the portion thereof which retroactively reduced the passing average in the bar examinations was declared unconstitutional for being an encroachment upon judicial functions.

In the *Macalintal Case*,[30] the Supreme Court, while sustaining the Overseas Absentee Voting Act, declared as unconstitutional that part of the law giving Congress the power to supervise its implementation by the Commission on Elections as inimical to the independence of the electoral body.

Suggested Reading:

Dumlao v. Commission on Elections, 95 SCRA 392
Philconsa v. Villareal, 56 SCRA 477
Tijam v. Sibonghanoy, 33 SCRA 29
Zandueta v. De la Costa, 66 Phil. 115
Manila Motor Co. v. Flores, 99 Phil. 738
Lozada v. Commission on Elections, 120 SCRA 337
De Agbayani v. PNB, 38 SCRA 429
Oposa v. Factoran, 224 SCRA 792

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[28] Barrameda v. Moir, 25 Phil. 44.

[29] In re Cunanan. 94 Phil. 534.

[30] *Supra.*

Chapter 4

THE FUNDAMENTAL POWERS OF THE STATE

THE FUNDAMENTAL powers of the State are the police power, the power of eminent domain, and the power of taxation. These powers are inherent and do not need to expressly conferred by constitutional provision on the State. They are supposed to co-exist with the State. The moment the State comes into being, it is deemed invested with these three powers as its innate attributes.

Briefly, the police power is the power of the State to regulate liberty and property for the promotion of the general welfare. The power of eminent domain enables the State to forcibly acquire private property, upon payment of just compensation, for some intended public use. By the power of taxation, the State is able to demand from the members of society their proportionate share or contribution in the maintenance of the government.

Similarities

The three inherent powers of the State are similar in the following respects:

(1) They are inherent in the State and may be exercised by it without need of express constitutional grant.

(2) They are not only necessary but indispensable. The State cannot continue or be effective unless it is able to exercise them.

(3) They are methods by which the State interferes with private rights.

(4) They all presuppose an equivalent compensation for the private rights interfered with.

(5) They are exercised primarily by the legislature.

Differences

The three inherent powers of the State differ from each other in the following ways:

(1) The police power regulates both liberty and property. The power of eminent domain and the power of taxation affect only property rights.

(2) The police power and the power of taxation may be exercised only by the government. The power of eminent domain may be exercised by some private entities.

(3) The property taken in the exercise of the police power is destroyed because it is noxious or intended for a noxious purpose. The property taken under the power of eminent domain and the power of taxation is intended for a public use or purpose and is therefore wholesome.

(4) The compensation of the person subjected to the police power is the intangible altruistic feeling that he has contributed to the general welfare. The compensation involved in the other powers is more concrete, to wit, a full and fair equivalent of the property expropriated or protection and public improvements for the taxes paid.

Limitations

Although inherent and indispensable, the fundamental powers of the State are not without restrictions. As ours is a government of limited powers, even these prerogatives may not be exercised arbitrarily, to the prejudice of the Bill of Rights. The presumption in libertarian societies is in favor of private rights and against attempts on the part of the State to interfere with them. "Constitutional provisions for the security of persons and property should be liberally construed."[1] Hence, the exercise of these fundamental powers is subject at all times to the limitations and requirements of the Constitution and may in proper cases be annulled by the courts of justice.

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[1] Boyd v. U.S., 116 U.S. 616.

Chapter 5

THE POLICE POWER

Definition and Scope

PROFESSOR FREUND describes the police power as the power of promoting the public welfare by restraining and regulating the use of liberty and property.[1]

As thus defined, the police power easily outpaces the other two inherent powers as instruments of the State in interfering with private rights. The power of eminent domain affects not all of the people directly but only those whose property is needed for conversion to public use. The power of taxation, while imposed on most of the people directly, demands only part of their money as their contribution to the upkeep of government. Both these powers involve only property rights. By contrast, the police power regulates not only the property but, more importantly, the *liberty* of private persons, and virtually all the people. It is in this sense that the police power may be regarded as infinitely more important than eminent domain and taxation.

Characteristics

The police power is considered the most pervasive, the least limitable, and the most demanding of the three powers. It may be exercised as long as the activity or the property sought to be regulated has some relevance to the public welfare. One might say, if a commonplace is permitted, that it operates from the womb to the tomb, protecting the person even before he is born and prescribing strictures and requirements as to the disposition of his body, and his estate, if any, when he dies. In between, practically everything he does or owns comes under the police power, as when he studies, reaches adulthood, marries, has children, practices a profession, acquires properties, builds a house, engages in business, enters into contracts, travels abroad, runs for public office, etc. How he dresses, where he may cross a street, when he may start to drive, what views he may validly express—all these and a myriad of other activities and properties of the member of society are within the ambit of the police power. The reach is virtually limitless. The person's acts and acquisitions are hemmed in by the police power. The justification is found in the ancient Latin maxims, *Salus populi est suprema lex* and *Sic utere tuo ut alienum non laedas,* which call for the subordination of individual benefit to the interests of the greater number.

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[1] The Police Power (Chicago, 1904).

Supercedes Contract and treaty

Owing to the need to protect society from the inordinate assertion of individual liberty, it has been held that the police power may not be bargained away through the medium of a contract or even a treaty. The impairment clause must yield to the police power whenever the contract deals with a subject affecting the public welfare. Such a contract suffers a congenital infirmity, to wit, its susceptibility to subsequent amendment by the State in the exercise of the police power as a postulate of the existing legal order.

In the landmark case of *Stone v. Mississippi,*[2] several persons had acquired for valuable consideration a franchise which they claimed allowed them to sell lottery tickets for a period of twenty-five years. After three years, however, all forms of gambling were prohibited by the state. Charged with violating this prohibition, they argued it did not apply to them because their franchise partook of the nature of a contract the obligation of which could not be impaired without offense to the Constitution. The U.S. Supreme Court did not agree, holding in part as follows:

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[2] 101 U.S. 814.

> All agree that the Legislature cannot bargain away the police power of a State. Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State; but no Legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police. (Metropolitan Bd. Of Excise v. Barrie, 34 N.Y., Boyd v. Alabama, 94 U.S., 645, 24 L. ed., 302)
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> No Legislature can bargain away the public health or the public morals. The People themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot divest itself of the power to provide for them. For this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself. (Beer Co. v. Massachusetts [*supra*])
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> The contracts which the Constitution protects are those that relate to property rights, not governmental. It is not always easy to tell on which side of the line which separates governmental from property rights a particular case is to be put; but in respect to lotteries there can be no difficulty. They are not, in the legal acceptation of the term, *mala in se,* but as we have just seen, may properly be made *mala prohibita.* They are species of gambling, and wrong in their influences. They disturb the checks and balances of a well ordered community. Society built on such a foundation would almost of necessity bring forth a population of speculators and gamblers, living on the expectation of what, by the casting of lots, or by lot, chance or otherwise,' might be 'awarded' to them from the accumulations of others. Certainly the right to stop them

> is governmental, to be exercised at all times by those in power, at their discretion. Anyone, therefore, who accepts a lottery charter, does so with the implied understanding that the People, in their sovereign capacity and through their properly constituted agencies, may resume it at any time when the public good shall require, and this whether it be paid for or not. All that one can get by such a charter is suspension of certain governmental rights in his favor, subject to withdrawal at will. He has, in legal effect, nothing more than a license to continue on the terms named for the specified time, unless sooner abrogated by the sovereign power of the State. It is a permit, good as against existing laws, but subject to future legislative and constitutional control or withdrawal.

The rule is the same even in the case of a treaty. Thus, in *Ichong vs. Hernandez,*[3] the petitioner sought to enjoin the enforcement of the Retail Trade Nationalization Law on the ground, among others, that it was inconsistent with the treaty of amity between the Philippines and China, the United Nations Charter and the Universal Declaration of Human Rights. The Supreme Court saw no conflict. "But even supposing that the law infringes upon the said treaty," it continued, "the treaty is always subject to qualification or amendment by a subsequent law (U.S. v. Thompson, 258 Fed. 257, 260), and the same may never curtail or restrict the scope of the police power of the State (Palston v. Pennsylvania, 58 L. ed. 539)."

The police power is dynamic, not static, and must move with the moving society it is supposed to regulate. Once exercised, it is not deemed exhausted and may be exercised again and again, as often as it is necessary for the protection or the promotion of the public welfare. Conditions change, circumstances vary; and to every such alteration the police power must conform. What may be sustained as a valid exercise of the power now may become constitutional heresy in the future under a different factual setting. Old notions may become outmoded even as new ideas are born, expanding or constricting the limits of the police power. For example, police measures validly enacted fifty years ago against the wearing of less than sedate swimsuits in public beaches would be laughed out of court in these days of permissiveness when prohibitions against even nude swimming are facing constitutional challenge. Price control laws, which before were considered encroachments on the right to property, are now accepted in all civilized jurisdictions. The affluent have practically surrendered to the intrusive reach of social legislation, such as those prescribing minimum wages and compulsory leaves, which before they could successfully resist on the basis of the impairment clause. And the police power continues to change even as constraints on liberty diminish and private property becomes more and more affected with public interest and therefore subject to regulation.

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[3] 101 Phil. 1155.

Finally, it should be observed that the police power may sometimes use the taxing power as an implement for the attainment of a legitimate police objective. For example, in *Powell v. Pennsylvania*,[4] the legislature ascertained, after a fact-finding investigation, that the margarine industry was operating to the prejudice of the consuming public because its products, besides being processed in an unsanitary manner, were being mistaken for butter. Instead of prohibiting margarine outright, which it could validly have done, it merely imposed an exorbitant tax thereon, making it unprofitable for the industry to continue without incurring loss. A similar measure may now be taken against massage parlors or sauna baths if they are found to be fronts for prostitution.

TAX as PP

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[4] 127 U.S. 678.

In *Lutz v. Araneta,*[5] the Supreme Court sustained as a legitimate exercise of the police power the imposition of a special tax on sugar producers for the purpose of creating a special fund to be used for the rehabilitation of the sugar industry.

> The tax levied by the challenged statute is for a regulatory purpose, namely, to provide ways and means for the rehabilitation and stabilization of the sugar industry. Sugar production is one of the great industries of the country and imbued with public interest, and, hence, Congress was empowered to find that the general welfare demanded that the sugar industry be stabilized. The law is thus primarily an exercise of the police power of the state and taxation was merely used to implement the state's power.

Eminent domain
used for PP

A similar ruling was made in the cases of *Tio v. Videogram Regulatory Board*[6] *and Gaston v. Republic Planters Bank.*[6a]

In *Association of Small Landowners v. Secretary of Agrarian Reform,*[6b] the Supreme Court, in sustaining the constitutionality of the Comprehensive Agrarian Reform Law, held that, like taxation, the power of eminent domain could be used as an implement of the police power. The expressed objective of the law was the promotion of the welfare of the farmers, which came clearly under the police power of the State. To achieve this purpose, the law provided for the expropriation of agricultural lands (subject to minimum retention limits for the landowner) to be distributed among the landless peasantry. As the *ponencia* observed:

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[5] 98 Phil. 148.

[6] 151 SCRA 208.

[6a] 158 SCRA 621.

[6b] 175 SCRA 343.

> To the extent that the measures under challenge merely prescribe retention limits for landowners, there is an exercise of the police power for the regulation of private property in accordance with the Constitution. But where, to carry out such regulation, it becomes necessary to deprive such owners of whatever lands they may own in excess of the maximum area allowed, there is definitely a taking under the power of eminent domain for which payment of just compensation is imperative.

Exercise of the Police Power

The police power is lodged primarily in the national legislature. By virtue of a valid delegation of legislative power, it may also be exercised by the President and administrative boards as well as the lawmaking bodies on all municipal levels, including the *barangay.* Municipal governments exercise this power under the general welfare clause,[7] pursuant to which they are authorized to "enact such ordinances and issue such regulations as may be necessary to carry out and discharge the responsibilities conferred upon it by law, and such as shall be necessary and proper to provide for the health, safety, comfort and convenience, maintain peace and order, improve public morals, promote the prosperity and general welfare of the municipality and the inhabitants thereof, and insure the protection of property therein."

The exercise of the police power lies in the discretion of the legislative department. Given a police problem, it is entirely up to the legislature to decide whether or not, in the first place, it should act against the problem. If it does, well and good; but if it does not, it may not be compelled to do so by judicial process. No *mandamus* is available to coerce the exercise of the police power. The only remedy against legislative inaction is a resort to the bar of public opinion, a refusal of the electorate to return to the legisla-

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[7] Secs. 91, 149, 177, 208, Local Government Code.

ture members who, in their view, have been remiss in the discharge of their duties.

If the legislature does decide to act, the choice of measures or remedies, provided only they conform to the requisites to be discussed presently, lies also within its exclusive discretion. Once determined, the remedy chosen cannot be attacked on the ground that it is not the best of the suggested solutions, or that it is unwise, or impractical or inefficacious, or even immoral. These are also political questions and therefore off-limits to the judiciary.

To the problem of prostitution, for example, the accepted remedies are outright prohibition, as under our Revised Penal Code, licensing subject to appropriate regulation, such as periodic medical check-ups, and the establishment of a red light district. If the third remedy, say, is selected, it may not be reviewed by the courts on the challenge that it encourages rather than deters prostitution and is immoral, to boot. These are questions that only the legislature can decide in the exercise of its sound discretion.

The problem of cigarette smoking is another illustration. Despite well-nigh conclusive researches linking cigarette smoking to lung cancer, and the rising incidence of this disease in the United States, the American Congress has taken steps that can only be described as indifferent or half-hearted. Still, the courts are powerless to intervene and compel more decisive action. To do so would be to convert the judiciary into a superlegislature and to invest it with a power that does not belong to it.

The ascertainment of facts upon which the police power is to be based is likewise a legislative prerogative. In the preceding example, the question of whether cigarette smoking does cause lung cancer must be decided exclusively by the lawmaking body, considering evidence *pro* and *con* in an appropriate fact-finding investigation. Whatever it decides is conclusive on the courts.

It is different, of course, if its conclusions are not supported by any semblance of proof at all, as where it declares—against all medical opinion—that heart disease is communicable and orders the segregation of persons afflicted therewith. But where one respectable sector of the medical profession believes that inoculation will prevent cholera and another group of doctors, equally prestigious, does not agree, legislative preference for the first view cannot be questioned in the courts. As Cooley puts it:

> The assumption must be that if evidence was necessary to establish the necessity for the law, that it was before the legislature when the act was passed. In the case of a statute purporting to have been enacted in the interest of the public health, all questions relating to the determination of matters of fact for the legislature. If there is a probable basis for sustaining the conclusion reached, its findings are not subject to judicial review. Debatable questions are for the legislature to decide. The courts do not sit to resolve the merits of conflicting theories.[8]

Thus, when in *Jacobson v. Massachusetts*,[9] a person convicted under a law providing for compulsory vaccination against smallpox offered to prove that the remedy was of dubious efficacy and might even cause other diseases, rejection of the offer by the trial court was sustained by the U.S. Supreme Court.

Tests of the Police Power

It is not to be deduced from what has been said that the judiciary is completely incompetent to review the exercise of the police power. The above situations assume the validity of the police measures adopted by the legislature.

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[8] Constitutional Limitations, 8th Ed., 379-80.
[9] 197 U.S. 11.

If the measures chosen are intrinsically invalid, courts have the right and the obligation to declare them so. The question of the validity of legislative enactments as determined by the criterion of their conformity to the Constitution is essentially justiciable and may be validly decided by the courts of justice.

As laid down in a number of cases,[10] the tests to determine the validity of a police measure are as follows:

(1) The interests of the public generally, as distinguished from those of a particular class, require the exercise of the police power; and

(2) The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals.

(1) Lawful Subject

The first requisite simply means that the subject of the measure is within the scope of the police power, that is, that the activity or property sought to be regulated affects the public welfare. If it does, the enjoyment of private rights may be subordinated to the interests of the greater number, on the time-honored principle that the welfare of the people is the supreme law.

In view of the growing complexity of modern society, there is hardly any human activity or private property that cannot be related, directly or indirectly, to the common welfare. It has already been remarked that practically everything a person does or owns has its impact, heavy or light, on the well-being of the community to which he belongs. Activities that were before regarded as coming under the private and exclusive domain of the individual have irresistibly and inevitably been drawn into the embrace of the police power. John Donne's famous statement that "no man is an island" could be, more than poetic philosophy, a valid legal principle derived from the police power of the State.

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[10] U.S. v. Toribio, 15 Phil. 85; Fabie v. City of Manila, 21 Phil. 486; Case v. Board of Health, 24 Phil. 256.

Thus, a person may not do with his own life as he pleases: he may not, for example, expose himself to disease by refusing vaccination, as he may contaminate his neighbors; or addict himself to drugs, as this would affect not only his health but also the safety and the morals of others; or eschew the use of clothes in public and thereby offend the sense of decency of the rest of the community; or indeed even kill himself, since suicide might have an inducive effect on others similarly inclined; and, moreover, the police power may protect a person against himself. A woman may not indulge her taste for foreign perfume even if she had the means to do so, as its importation would reduce our foreign reserves and as well prejudice the local perfume industry; nor may she abort an unwanted child or marry another's husband for the police power protects the sanctity of life and the inviolability of marriage. One who owns a house does not have absolute power over it; he may not set it on fire and thus endanger his neighbors, or use it as a den of subversives to the detriment of public order, or build it high to obstruct light and air from the next lot or build it low to the impairment of aesthetic values. Billboards offensive to sight or distracting the attention of motorists may be prohibited.[11] Ceiling or floor prices may be prescribed for privately-owned prime commodities for the protection of the consuming public against hoarders, profiteers and blackmarketeers.[12] Common carriers may be required to install devices and conveniences for the safety and comfort of passengers. Human sacrifices may not be permitted in the exercise of religious freedom, or libel and slander in the exercise of freedom of expression. As long as the object is the public welfare and the subject of regulation may be properly related thereto, there is compliance with the first test requiring the primacy of the welfare of the many over the interests of the few.

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[11] Churchill & Tait v. Rafferty, 32 Phil. 580.

[12] Yakus v. White, 321 U.S. 414.

Thus, in *Taxicab Operators of Metro Manila v. Board of Transportation,*[13] an administrative regulation phasing out taxicabs more than six years old was held a valid police measure to protect the riding public and promote their comfort and convenience. And in *Velasco v. Villegas,*[14] an ordinance prohibiting barber shop operators from rendering massage services in a separate room was likewise sustained, to prevent immorality and enable the authorities to properly assess license fees. In *Bautista v. Junio,*[15] the police power was also sustained in prohibiting heavy and extra-heavy vehicles from using public streets on weekends and legal holidays, the object of the ban being energy conservation. In the *Tio Case,*[16] the creation of the Videogram Regulatory Board was sustained as a proper exercise of the police power "to answer the need for regulating the video industry, particularly because of the rampant film piracy, the flagrant violation of intellectual property rights, and the proliferation of pornographic video tapes."

In the landmark case of *Lozano v. Martinez,*[16a] the Supreme Court upheld the constitutionality of B.P. No. 22, otherwise known as the Bouncing Checks Law. The unanimous decision penned by Justice Pedro L. Yap declared in part as follows:

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[13] 119 SCRA 597.
[14] 120 SCRA 568.
[15] 127 SCRA 329.
[16] *Supra.*
[16a] 146 SCRA 323.

> Recent statistics of the Central Bank show that one-third of the entire money supply of the country, roughly totalling P32.3 billion, consists of peso demand deposits; the remaining two-thirds consist of currency in circulation. These demand deposits in the banks constitute the funds against which, among others, commercial papers like checks, are drawn. The magnitude of the amount involved amply justifies the legitimate concern of the state in preserving the integrity of the banking system. Flooding the system with worthless checks is like pouring garbage into the bloodstream of the nation's economy.
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> The effects of the issuance of a worthless check transcends the private interests of the parties directly involved in the transaction and touches the interest of the community at large. The mischief it creates is not only a wrong to the payee or holder, but also an injury to the public. The harmful practice of putting valueless commercial papers in circulation, multiplied a thousandfold, can very well pollute the channels of trade and commerce, injure the banking system and eventually hurt the welfare of society and the public interest. As aptly stated—
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>> The 'check flasher' does a great deal more than contract a debt; he shakes the pillars of business; and to my mind, it is a mistaken charity of judgment to place him in the same category with the honest man who is unable to pay his debts, and for whom the constitutional inhibition against 'imprisonment for debt, except in cases of fraud was intended as a shield and not a sword.'
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> In sum, we find the enactment of BP 22 a valid exercise of the police power and is not repugnant to the constitutional inhibition against imprisonment for debt.

In *Department of Education v. San Diego*,[16b] the petitioner issued a regulation disqualifying any person who has failed the National Medical Admission Test three times from taking it again (and, in effect, from enrolling in a medical school). Annulled by the lower court, it was rein-stated by the Supreme Court as a valid police measure intended for the protection of the patients. Said the Court:

[16b] 180 SCRA 533.

> While every person is entitled to aspire to be a doctor, he does not have a constitutional right to be a doctor. This is true of any other calling in which the public interest is involved; and the closer the link, the longer the bridge to one's ambition. The State has the responsibility to harness its human resources and to see to it that they are not dissipated or, no less worse, not used at all. These resources must be applied in a manner that will best promote the common good while also giving the individual a sense of satisfaction.
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> A person cannot insist on being a physician if he will be a menace to his patients. If one who wants to be a lawyer may prove better as a plumber, he should be so advised. Of course, he may not be forced to be a plumber, but on the other hand he may not force his entry into the bar. By the same token, a student who has demonstrated promise as a pianist cannot be shunted aside to take a course in nursing, however appropriate this career may be for others.
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> The private respondent must yield to the challenged rule and give way to those better prepared. Where even those who have qualified may still not be accommodated in our already crowded medical schools, there is all the more reason to bar those who have been tested and found wanting.
>
> It is not enough to simply invoke the right to quality education as a guaranty of the Constitution. One must show that he is entitled to it because of his preparation and promise.

In *Sangalang v. Intermediate Appellate Court,*[16c] the Supreme Court sustained the act of the mayor of Makati in opening two erstwhile private roads in Bel Air Village on the basis of stipulations in the deeds of the donation covering the said streets that they would be available to the general public under certain conditions. The rationale was "the demands of the common good, in terms of traffic decongestion and public convenience."

[16c] 176 SCRA 719.

In *Del Rosario v. Bengzon,*[17] the Supreme Court sustained the Generics Act, which requires doctors to prescribe generic drug products rather than specific brand medicines, some of which may cost more than others because of the advertising cost that is added to their price. According to Justice Carolina Griño-Aquino:

> The purpose of the Generics Act is to carry out the policy of the State to "promote and require the use of generic drug products that are therapeutically equivalent to their brand-name counterparts" for the therapeutic effect of a drug does not depend on its "brand" but on the "active ingredients" which it contains. The medicine that cures is the "active ingredient" of the drug, not the brand name by which it has been baptized by the manufacturer.

The principal issue raised in *Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections*[17a] was the validity of Sec. 92 of BP Blg. 881 requiring radio and television stations to give free air time to the respondent to be used as the COMELEC Hour for broadcasting information regarding the candidates in the 1998 elections. It was argued that the requirement constituted a taking without due process of law and payment of just compensation, besides violating the equal protection clause and the provisions of their franchise.

The challenge was rejected by the Supreme Court, which held that the law was a proper regulation by the State of the use of the airwaves. According to Justice Mendoza, "Radio and television broadcasting companies, which are given franchises, do not own the airwaves and frequencies through which they transmit broadcast signals and images. They are merely given the temporary privilege of using them. Since a franchise is a mere privilege, the exercise of the privilege may be reasonably be burdened with the performance by the grantee of some form of public service."

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[17] 180 SCRA 521.
[17a] *Supra.*

But as ubiquitous as the police power may be, it is fortunate for individual liberty that there are still some areas of human activity that are not within its reach. This will be so where the subject sought to be regulated has no bearing whatever upon the public welfare. The police power can unquestionably impose restrictions on what a person may wear in public, but in the privacy of his own bedroom, his attire or lack of it is his own business. Merchants may be required to keep books of accounts and even to use certain languages therein, as their activities affect the public.[17b] But ordinary individuals may not be compelled to keep diaries or to use certain languages therein or to open them for inspection by public agencies or functionaries, as these records are not involved in the interests of the general community. The price of staple goods, like rice, is subject to limitation by the police power for the protection of the consuming public.[18] But the price of a work of art, like a painting by Rembrandt, or of a novel by a prestigious writer, cannot be similarly limited as these are not basic necessities affecting the people as a whole. A person may not be prohibited from planting roses in his garden, or from using brown drapes in his study room, or from parting his hair in the middle, or from preferring a particular type of music, or from owning a gold watch, or from exercising by dynamic tension. These are entirely private matters in which the public interest is not at all involved and over which therefore the police power cannot be validly asserted.

[17b] Yu Cong Eng v. Trinidad, 271 U.S. 500.

[18] Yakus v. White, *supra*.

The issue in *Ople v. Torres*[18a] was an administrative order issued by President Fidel V. Ramos establishing a National Computerized Identification Reference System for the expressed purpose of facilitating transactions with the government, particularly those providing basic services and social security benefits. Suspicious of its real motives, the petitioner challenged it before the Supreme Court as a sinister attempt of the government to control its citizens by intruding into their right to privacy. By an 8-6 vote, the order was struck down as an invalid police measure.

Writing for the majority, Justice Reynato S. Puno declared that the order "pressures the people to surrender their privacy by giving information about themselves on the pretext that it will facilitate the delivery of basic services. Given the record-keeping powers of the computer, only the indifferent will fail to perceive the danger that A.O. No. 308 gives the government the power to compile a devastating dossier against unsuspecting citizens."

(2) Lawful Means

Even if the purpose be within the scope of the police power, the law will still be annulled if the subject is sought to be regulated in violation of the second requirement. In Constitutional Law, the end does not justify the means. The lawful objective, in other words, must be pursued through a lawful method; that is, both the end and the means must be legitimate. Lacking such concurrence, the police measure shall be struck down as an arbitrary intrusion into private rights.

Thus, to contain the spread of leprosy in the interest of public health, the leper may be confined in a leprosarium where he will not contaminate the other members of his community.[19] The restriction of his liberty is reasonably related to the purpose sought to be accomplished and cannot be considered unduly oppressive upon him. But if in lieu of such remedy the legislature were to provide for his summary execution, the remedy, being arbitrary, would be illegal although the purpose of the law would be achieved.

[18a] 293 SCRA 141.

In pursuance of the constitutional policy to afford protection to labor, the legislature may validly require reasonable working hours or minimum wages.[20] But if the hours prescribed are inordinately short or the daily wages excessively high, this coddling of the working class may be successfully challenged as being unduly oppressive to the employers.

A law requiring the attendance of a full-time pharmacist in drug stores is valid as to purpose and method since the presence of the pharmacist is intended to prevent the wrong dispensing of medicines to the detriment of the health or life of the customer.[21] But if the person whose presence was required was an engineer or a lawyer, the law would be unconstitutional as there would be no reasonable relation between the means and the end.

In *Ynot v. Intermediate Appellate Court,*[22] an executive order prohibited the transport of carabaos or carabao meat across provincial boundaries without government clearance, for the purpose of preventing indiscriminate slaughter of these animals. While conceding the validity of the purpose, the Supreme Court had the following to say about the method:

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[19] Lorenzo v. Director of Health, 50 Phil. 595.

[20] Ramos v. Poblete, 73 Phil. 241.

[21] See Roschen v. Ward, 277 U.S. 337.

[22] 148 SCRA 659.

> We do not see how the prohibition of the interprovincial transport of carabaos can prevent their indiscriminate slaughter, considering that they can be killed anywhere, with no less difficulty in one province than in another. Obviously, retaining the carabaos in one province will not prevent their slaughter there, any more than moving them to another province will make it easier to kill them there. As for the carabeef, the prohibition is made to apply to it as otherwise, so says the executive order, it could be easily circumvented by simply killing the animal. Perhaps so. However, if the movement of the live animals for the purpose of preventing their slaughter cannot be prohibited, it should follow that there is no reason either to prohibit their transfer as, not to be flippant, dead meat.
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> * * *
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> In the instant case, the carabaos were arbitrarily confiscated by the police station commander and were returned to the petitioner only after he had filed a complaint for recovery and given a *supersedeas* bond of P12,000.00, which was ordered confiscated upon his failure to produce the carabaos when ordered by the trial court. The executive order defined the prohibition, convicted the petitioner and immediately imposed punishment, which was carried out forthright. The measure struck at once and pounced upon the petitioner without giving him a chance to be heard, thus denying him the centuries-old guaranty of elementary fair play.

In one American case,[23] the challenged law prohibited the use of shoddy for the making of mattresses on the ground that the material was inimical to the health of the user. It was ascertained, however, that shoddy did not have any toxic or other deleterious properties. The statute was therefore annulled for lack of a reasonable connection between the purpose sought to be accomplished and the means employed to achieve it.

A law conditioning the issuance of a marriage license upon the applicants first passing a blood test would be constitutional.[24] The purpose is to lessen the incidence of social diseases and the means employed in pursuance thereof are reasonably relevant and not unduly oppressive. A law limiting the capacity of common carriers, or of theaters,[25] while it would reduce the profits of the operators, would nevertheless be valid as this would be a reasonable method for promoting the comfort, convenience and safety of the customers.

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[23] Weaver v. Palmer Bros. Co., 270 U.S. 402.

Existing law validly punishes rape with life imprisonment and even death if the offense is considered heinous. There is here an equivalence between the degree of the offense and the degree of the penalty, which is reasonably expected to deter outrage to female chastity, honor and security. Suppose, however, that the penalty prescribed were, not death, but castration of the convicted rapist? Such a remedy, while certain to prevent his repetition of the crime, would nevertheless be invalid as an affront to the integrity of the person's body as guaranteed by due process.

How may the legislature regulate the use of public places in the interest of community cleanliness and beauty? Obviously, these objectives could be achieved by an ordinance requiring litter to be deposited in trash receptacles and punishing non-compliance therewith. These purposes, however, while valid, would be invalidly pursued if the law were to prohibit the distribution of handbills in public places, on the ground that the people who receive them would only scatter them in the streets. Such a law would violate the distributor's right to articulate and disseminate ideas as guaranteed under the freedom of expression clause in the Constitution.[26]

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[24] Gould v. Gould, 61 Atl. 604.

[25] People v. Chan, 65 Phil. 611.

[26] Jamison v. Texas, 318 U.S. 413.

In fine, the means employed for the accomplishment of the police objective must pass the test of reasonableness and, specifically, conform to the safeguards embodied in the Bill of Rights for the protection of private rights. Failing this, the law will be annulled for violation of the second requirement.

Integrity of the Police Power

It can be seen from the above discussion that, properly exercised, the police power can be an effective instrument for the furtherance of the public welfare. There is in fact no better instrument for this purpose in a free society. Indispensably, of course, the two criteria just examined must be strictly complied with lest their disregard debase the police power into an unwarranted intrusion into individual liberty and property rights or, worse, a bludgeon for oppression. In such a case, the free society will deteriorate into a police state with absolute power over the individual. The ideal of the greatest good for the greatest number will be subordinated to the wicked scheme of perpetuating despotic authoritarianism. This corruption of the police power will lead to the decay of democracy itself.

Suggested Reading:

Calalang v. Williams, 70 Phil. 726
United States v. Toribio, 45 Phil. 85
Churchill & Tait v. Rafferty, 32 Phil. 580
United States v. Salaveria, 39 Phil. 102
Jacobson v. Massachusetts, 197 U.S. 11
Buck v. Bell, 274 U.S. 200
Agustin v. Edu, 88 SCRA 195

City Gov't. of Quezon City v. Ericta, 122 SCRA 759

Ynot v. Intermediate Appellate Court, 148 SCRA 659

Tio v. Videogram Regulatory Board, 151 SCRA 208

Lozano v. Martinez, 146 SCRA 323

Telecommunications and Broadcast Attorneys of the Philippines v. Commission on Elections, 289 SCRA 337

Chapter 6

EMINENT DOMAIN

Definition and Scope

WHERE PRIVATE property is needed for conversion to some public use, the first thing obviously that the government should do is to offer to buy it.[1] If the owner is willing to sell and the parties can agree on the price and the other conditions of the sale, a voluntary transaction can then be concluded and the transfer effected without the necessity of judicial action.

But if the owner of the private property is unwilling to part with it, or, being willing, cannot agree to the conditions of the transfer, then it will be necessary for the government to use its coercive authority. By its power of eminent domain, it can then, upon payment of just compensation, forcibly acquire the needed property in order to devote it to the intended public use.

Also called the power of expropriation, eminent domain is described as "the highest and most exact idea of property remaining in the government" that may be acquired for some public purpose through a method "in the nature of a compulsory sale to the State."[2]

Being inherent, the power of eminent domain does not need to be specifically conferred on the government by the Constitution. As it happens, however, it is expressly provided in Article III, Section 9, that "*private property shall not be taken for public use without just compensation.*" This provision is not a grant but indeed a *limitation* of the power as its negative and restrictive language clearly suggests.

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[1] Noble v. City of Manila, 67 Phil. 1.
[2] Black's Law Dictionary, 4th ed., 616.

This limiting function is in keeping with the philosophy of the Bill of Rights against the arbitrary exercise of governmental powers to the detriment of individual rights. Given this function, the provision should therefore be strictly interpreted against the expropriator and liberally in favor of the property owner.

"The exercise of the right of eminent domain, whether directly by the State, or by its authorized agents, is necessarily in derogation of private rights, and the rule in that case is that the authority must be strictly construed. No species of property is held by individuals with greater tenacity, and none is guarded by the Constitution and laws more sedulously, than the right to the freehold of inhabitants. When the legislature interferes with that right and, for greater public purposes, appropriates the land of an individual without his consent, the plain meaning of the law should not be enlarged by doubtful interpretation."[3]

Who May Exercise

The power of eminent domain is lodged primarily in the national legislature, but its exercise may be validly delegated to other governmental entities and, in fact, even to private corporations, like the so-called quasi-public corporations serving essential public needs or operating public utilities. Under existing laws, the following may exercise the power of expropriation:

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[3] Bensley v. Mountainlake Water Co., 13 Cal., 306 and cases cited 73 Am. Dec., 576.

(1) The Congress.

(2) The President of the Philippines.

(3) The various local legislative bodies.

(4) Certain public corporations, like the Land Authority and the National Housing Authority.

(5) Quasi-public corporations like the Philippine National Railways, the Philippine Long Distance Telephone Co. and the Meralco.

(1) Destruction from Necessity

Distinction should be made between eminent domain and destruction from necessity in that the latter may be validly undertaken even by private individuals. This is not allowed in the case of eminent domain. The leading authority on this point is *American Print Works v. Lawrence*,[4] where the mayor of New York was sued for damages by the owner of a building which he had ordered blasted to stay the great fire of 1853. Rejecting the plaintiff's contention that there was here an expropriation for which he was entitled to payment of just compensation, the U.S. Supreme Court declared in part:

> The destruction of the property in question does not come under the right of eminent domain, but under the right of necessity, of self-preservation. The right of eminent domain is a public right; it arises from the laws of society and is vested in the state or its grantee, acting under the right and power of the state, or benefit of the state, or those acting under it. The right of necessity arises under the laws of society or society itself. It is the right of self-defense, of self-preservation, whether applied to persons or to property. It is a private right vested in every individual, and with which the right of the state or state necessity has nothing to do.

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[4] 23 N.J.L. 590.

Additionally, it will be noted that destruction from necessity cannot require the conversion of the property taken to public use, nor is there any need for the payment of just compensation.

Necessity of Exercise

Questions of necessity or wisdom are essentially political when decided by the national legislature and are usually not subject to judicial review. Where, for example, the lawmaking body decides to establish a public playground and expropriates private property for the purpose, the owner cannot argue that the playground is not necessary or that, assuming its necessity, it is better that the project be laid on some other site. These are matters that the national legislature can decide alone in its discretion.

> The legislature, in providing for the exercise of the power of eminent domain, may directly determine the necessity for appropriating private property for a particular improvement for public use, and it may select the exact location of the improvement. In such a case, it is well settled that the utility of the proposed improvement, the extent of the public necessity for its construction, the expediency of constructing it, the suitableness of the location selected and the consequent necessity of taking the land selected for its site, are all questions exclusively for the legislature to determine, and the courts have no power to interfere, or to substitute their own views for those of the representatives of the people.[5]

But where these questions are decided by a delegate only of the national legislature, the Supreme Court has adopted a more censorious attitude. Conformably to the rule that the power of eminent domain should be interpreted liberally in favor of the private property owner, the judiciary has assumed the power to inquire into whether the authority conferred upon such delegate has been *cor-*

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[5] City of Manila v. Chinese Community, *infra.*

rectly or *properly* exercised by it. This will involve looking into whether the expropriation contemplated by the delegate is necessary or wise.

Thus, in *Republic of the Philippines v. La Orden de PP. Benedictinos de Filipinas*,[6] the President of the Philippines ordered the expropriation of a portion of the property of the defendant along Mendiola street in Manila for the extension of Azcarraga (now Recto) street. The defendant moved to dismiss on the grounds *inter alia* that: (1) there was no necessity for the proposed expropriation; and (2) the proposed Azcarraga Extension could pass through a different site which would entail less expense to the government and would not necessitate the expropriation of property devoted to education. The trial court granted the motion, holding that the expropriation was "not of extreme necessity," and the government appealed. Ruling on the decision *a quo,* the Supreme Court declared in part:

> Private property may be expropriated for public use and upon payment of just compensation; condemnation of property is justified only if it is for the public good and there is genuine necessity therefor of a public character. Consequently, the courts have the power to inquire into the legality of the right of eminent domain and to determine whether or not there is a genuine necessity therefor.
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> It does not need extended argument to show that whether or not the proposed opening of the Azcarraga extension is a necessity in order to relieve the daily congestion of traffic on Legarda Street is a question of fact dependent not only upon the facts of which the trial court very liberally took judicial notice but also other facts that do not appear of record and must, therefore, be established by means of evidence. The parties should have been given an opportunity to present their respective evidence upon these facts and others that might be of direct or indirect help in determining the vital question of fact involved, namely, the need to open the exten-

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[6] 1 SCRA 646.

sion of Azcarraga Street to ease and solve the traffic congestion on Legarda Street."

In the earlier case of *City of Manila v. Chinese Community*,[7] the plaintiff sought to expropriate a portion of a private cemetery for conversion into an extension of Rizal Avenue. On the defendants' claim that the expropriation was not necessary, the Supreme Court had the following to say:

> The general power to exercise the right of eminent domain must not be confused with the right to exercise it in a particular case. The power of the legislature to confer, upon municipal corporations and other entities within the State, general authority to exercise the right of eminent domain cannot be questioned by courts, but that general authority of municipalities or entities must not be confused with the right to exercise it in particular instances. The moment the municipal corporation or entity attempts to exercise the authority conferred, it must comply with the conditions accompanying the authority. The necessity for conferring the authority upon a municipal corporation to exercise the right of eminent domain is admittedly within the power of the legislature. But whether or not the municipal corporation or entity is exercising the right in a particular case under the conditions imposed by the general authority, is a question which the courts have the right to inquire into.

Private Property

Anything that can come under the dominion of man is subject to expropriation. This will include real and personal, tangible and intangible properties. A franchise is a property right and may therefore be expropriated. Churches and other religious properties are likewise expropriable notwithstanding the principle of separation of Church and State. And while it has been said that the wheels of commerce must stop at the grave, even cemeteries may when necessary be taken under the power of eminent domain.

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[7] 40 Phil. 349.

The only exceptions to this rule are money and choses in action. Expropriation of money would be a futile act because of the requirement for the payment of just compensation, usually also in money. A chose in action is "a personal right not reduced into possession but recoverable by a suit at law, a right to receive, demand or recover a debt, demand or damages on a cause of action *ex contractu* or for a tort or omission of duty."[8] It is essentially conjectural both as to its validity and its value.

Property already devoted to public use is still subject to expropriation, provided this is done directly by the national legislature or under a specific grant of authority to the delegate. A mere general authority may not suffice. In such a case the courts will have authority to inquire into the necessity of the expropriation and, finding none, refuse to allow it. Thus, in the *Chinese Community Case*,[9] the Supreme Court declared:

> To disturb the mortal remains of those endeared to us in life sometimes becomes the sad duty of the living, but except in cases of necessity, or for laudable purposes, the sanctity of the grave, the last resting place of our friends, should be maintained, and the preventive aid of the courts should be invoked for that object. x x x In the present case, even granting that a necessity exists for the opening of the street in question, the record contains no proof of the need of opening the same through the cemetery. The record shows that adjoining and adjacent lands have been offered to the city free of charge, which will answer every purpose of the plaintiff.

In the novel case of *Republic of the Philippines v. PLDT*,[10] services were considered embraced in the concept of property subject to taking under the power of eminent domain. At issue here was the right of the Bureau of Telecommunications to demand interconnection between the Government Telephone System and that of the PLDT, so that the former could make use of the lines and facilities of the PLDT. The Supreme Court overruled the defendant's objections to this arrangement, holding as follows:

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[8] Black's Law Dictionary, 4th ed., 305.

[9] *Supra.*

[10] 26 SCRA 620.

> It is true parties cannot be coerced to enter into a contract where no agreement is had between them. But we must not overlook the fact that the Republic, in the exercise of the sovereign power of eminent domain, may require the telephone company to permit interconnection of the Government Telephone System and that of PLDT, as the needs of the government service may require, subject to the payment of just compensation to be determined by the court.
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> Normally, of course, the power of eminent domain results in the taking or appropriation of title to, and possession of, the expropriated property; but no cogent reason appears why said power may not be availed of to impose only a burden upon the owner of condemned property, without loss of title and possession. It is unquestionable that real property may, through expropriation, be subjected to an easement of right of way. The use of the PLDT's lines and services to allow interservice connection between both telephone systems is not much different. In either case private property is subjected to a burden for public use and benefit. If, under Section 6, Article XIII (now Article XIV) of the Constitution, the state may, in the interest of national welfare, transfer utilities to public ownership upon payment of just compensation, there is no reason why a state may not require a public utility to render services in the general interest, provided just compensation is paid therefor. Ultimately, the beneficiary of the interconnecting service would be the users of both telephone systems, so that the condemnation would be for public use.

A similar ruling was made in *Philippine Long Distance Telephone Co. v. National Telecommunications Commis-*

sion,[10a] where the PLDT was required to interconnect with a private communications company.

Finally, it should be observed that the property subject of expropriation must be by its nature or condition wholesome, as it is intended to be devoted to a public use. In this respect, as previously remarked, if differs from property taken under the police power, which is sought to be destroyed because it is noxious or intended for a noxious purpose.

Taking

Taking, as the term is commonly understood, imports a physical dispossession of the owner, as when he is ousted from his land or relieved of his watch or his car and is thus deprived of all beneficial use and enjoyment of his property. In law, however, the term has a broader connotation. Taking may include trespass without actual eviction of the owner, material impairment of the value of the property or prevention of the ordinary uses for which the property was intended.

Where, for example, farmland is permanently inundated because of the construction of a dam nearby, the owner who is prevented from planting on the land is entitled to compensation although he remains in possession of the property.[11] If, as in *U.S. v. Causby,*[12] government planes fly over private property at such a low altitude as to practically touch the tops of the trees thereon, there would be such an intrusion into the superjacent rights of the owner as to entitle him to payment of just compensation although again there is no divestiture of title.

[10a] 190 SCRA 717.

[11] U.S. v. Lynch, 188 U.S. 445.

[12] 328 U.S. 256.

In *Ayala de Roxas v. City of Manila,*[13] it was held that the imposition of an easement over a 3-meter strip of the plaintiff's property could not be legally done without payment to it of just compensation. And in the case *of People v. Fajardo,*[14] a municipal ordinance prohibiting construction of any building that would destroy the view of the plaza from the highway was considered a taking under the power of eminent domain that could not be allowed without payment of just compensation to the owner affected.

The right-of-way easement, resulting in the restriction or limitation on property rights over the land traversed by transmission lines, according to *National Power Corporation v. Aguirre-Paderanga,*[14a] also falls within the ambit of the term "expropriation."

Nevertheless, not every taking is compensable, as it may be justified under the police power. For instance, a building on the verge of collapse may be ordered demolished in the interest of public safety, and the owner will not be entitled to payment for the loss he has sustained even if he has been completely deprived of his property. If a street is closed for repairs and all the business establishments thereon suffer considerable loss as a result, the owners cannot claim that there has been as to them a compensable taking because of the diminution in the value of their property. The same principle will apply if, say, a railroad company is allowed to operate along a street, resulting in the depreciation of the properties thereon because of the smoke, soot, gases, noise, cinders and vibrations caused by the passing trains.

There is in these cases a valid exercise of the police power aimed at improving the general welfare, and whatever damages are sustained by the property owners are regarded as merely incidental to a proper exertion of such power. The losses sustained are in the nature of *damnum absque injuria.* The only recompense available to the owners is the altruistic feeling that they have somehow, by their sacrifice, contributed to the well-being of the people in general.

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[13] 9 Phil. 215.

[14] 104 Phil. 443.

[14a] 464 SCRA 481.

This rule is valid as long as the prejudice suffered by the individual property owner is shared in common with the rest of the community. Conversely, if he suffers more than his aliquot part of the damages, that is, a special injury over and above that sustained by the rest of the community, he will be entitled to payment of the corresponding compensation.

Thus, in *Richards v. Washington Terminal,*[15] it was shown that an exhaust fan installed in a tunnel to clear it of smoke after the passage of trains through it blew most of the smoke directly into the house of the petitioner, which thus sustained more than the damage incurred by the other houses in the vicinity. The U.S. Supreme Court held that there was as to Richards a taking under the power of eminent domain for which he was entitled to just compensation.

To be sure, it is not always easy to distinguish between taking under the police power and taking under the power of expropriation. Jurists have differed sharply on this matter. Suppose, for example, a law were to prohibit the construction of buildings beyond a certain height for reasons of public safety. Would this be an exercise of the police power, or could the owners tenably claim that there is a taking of the airspace over their land, which is as much a part of their property as the surface rights? There is as yet, unfortunately, no categorical criterion to be applied in answering difficult questions of this nature.

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[15] 233 U.S. 546.

At any rate, it is best to remember that, according to *Republic v. Castellvi*,[16] the requisites of taking in eminent domain are as follows:

(1) The expropriator must enter a private property.

(2) The entry must be for more than a momentary period.

(3) The entry must be under warrant or color of legal authority.

(4) The property must be devoted to public use or otherwise informally appropriated or injuriously affected.

(5) The utilization of the property for public use must be in such a way as to oust the owner and deprive him of beneficial enjoyment of the property.

In this case, the government had rented and started occupying a parcel of land in 1947 and, when the owner refused to continue extending the lease, commenced expropriation proceedings in 1959. As the property was supposed to be assessed for purposes of just compensation from the time of the taking, the government argued that it should be deemed to have taken the same in 1947, when the lease commenced, and not 1959 when the proceedings were begun. The Supreme Court, applying the above criteria, held as follows:

> It is clear, therefore, that the taking' of Castellvi's property for purposes of eminent domain cannot be considered to have taken place in 1947 when the Republic commenced to occupy the property as lessee thereof. We find merit in the contention of Castellvi that two essential elements in the taking' of property under the power of eminent domain, namely: (1) that the entrance and occupation by the condemnor must be for a permanent or indefinite period, and (2) that in devoting the property to public

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[16] 58 SCRA 336.

> use the owner was ousted from the property and deprived of its beneficial use, were not present when the Republic entered and occupied the Castellvi property in 1947.

In has also been held that mere notice of the intention to expropriate a particular property does not bind its owner and inhibit him from disposing of it or otherwise dealing with it. Such a notice will not justify immediate taking.[17] Neither will the mere passage of an ordinance authorizing expropriation. The expropriator can enter the said property only after expropriation proceedings are actually commenced and the deposit required by law is duly made.

Furthermore, the owner does not need to file the usual claim for recovery of just compensation with the Commission on Audit if the government takes over his property and devotes it to public use without benefit of expropriation. As held in *Amigable v. Cuenca*,[18] he may immediately file a complaint with the proper court for payment of his property as the arbitrary action of the government shall be deemed a waiver of its immunity from suit.

In *City Government of Quezon City v. Ericta*,[19] the petitioner contended that an ordinance requiring private cemeteries to reserve 6% of their total areas for the burial of paupers was a valid exercise of the police power under the general welfare clause. The Supreme Court disagreed, observing that property taken under the police power is sought to be destroyed and not, as in this case, to be devoted to a public use. There was here a taking of private property for public use but without payment of just compensation in violation of the principles governing eminent domain. "The ordinance is actually a taking without compensation of a certain area from a private cemetery to benefit paupers who are charges of the municipal corporation," it declared. "Instead of building or maintaining a public cemetery for this purpose, the city passes the burden to private cemeteries."

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[17] People v. Fajardo, *supra*.
[18] 43 SCRA 360.
[19] 122 SCRA 759.

In *Philippine Press Institute v. Commission on Elections*,[19a] the Supreme Court declared as unconstitutional a resolution of the respondent electoral body directing newspapers to provide free Comelec space of not less than one-half page for the common use of political parties and candidates. Through Justice Feliciano, it held *inter alia* that the compulsory "donation" was a "taking" of private property without payment of the just compensation required in expropriation cases. Moreover, the respondent had not established the necessity of the taking, considering that the newspapers were not unwilling to sell advertising space, let alone its own authority to exercise the power of eminent domain.

Public Use

Public use, as traditionally understood, means any use directly available to the general public as a matter of right and not merely of forbearance or accommodation. Where the expropriated property is converted into, say, a plaza—or a park, or an airfield, or a highway—it thereby becomes *res communes* and, as such, is subject to direct enjoyment by any and all members of the public indiscriminately. There will also be a public use involved even if the expropriated property is not actually acquired by the government but is merely devoted to public services administered by privately-owned public utilities like telephone or light companies.[20] The reason is that such services are demandable as a matter of right by any one prepared to pay for them.

[19a] 244 SCRA 272.

It does not matter whether the direct use of the expropriated property by the public be for free or for a fee. The important thing is that any member of the general public, as such, can demand the right to use the converted property for his direct and personal convenience.

This original meaning of the phrase has now been broadened to cover uses which, while not directly available to the public, redound to their indirect advantage or benefit. An example would be the purpose contemplated in the subdivision of the expropriated lands into small lots for sale at cost to deserving citizens.

The lots, once transferred, cease to be public property and come under the exclusive ownership of the transferees. The public cannot demand their use as in the case of a street; the private owners can in fact bar the whole world therefrom. Nevertheless, although private individuals are the direct beneficiaries of this project, the requirement of public use is deemed satisfied because of the vicarious advantages enjoyed by the people as a whole. Among these is the promotion of social justice objectives like the more equitable diffusion of property ownership, the undertaking of agrarian reforms, and the enhancement of the dignity, welfare and security of the underprivileged.

The conversion of a slum area into a model housing community would directly benefit only those fortunate enough to acquire dwellings in the homesite. Nonetheless, the people as a whole would profit indirectly from the elimination of many problems engendered in the slums, such as fire hazards, lack of proper sanitation, ugliness, disease, and the adverse effects of the sub-human conditions in the place upon the slum-dwellers in general. Slum clearance is therefore now regarded as a valid object of expropriation under the modern expanded interpretation of public use.[21]

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[20] Denieter Land Co. v. Florida Public Service Co., 128 So. 402.

In *Province of Camarines Sur v. Court of Appeals,*[21a] the Supreme Court held through Justice Camilo D. Quiason:

> The expropriation of the property authorized by the questioned resolution is for a public purpose. The establishment of a pilot development center would inure to the direct benefit and advantage of the people of the Province of Camarines Sur. Once operational, the center would make available to the community invaluable information and technology on agriculture, fishery and the cottage industry. Ultimately, the livelihood of the farmers, fishermen and craftsmen would be enhanced. The housing project also satisfies the public purpose requirement of the Constitution.

Just Compensation

Just compensation is described as a full and fair equivalent of the property taken from the private owner by the expropriator. This is intended to indemnify the owner fully for the loss he has sustained as a result of the expropriation. The measure of this compensation is not the taker's gain but the owner's loss. The word "just" is used to intensify the meaning of the word "compensation," to convey the idea that the equivalent to be rendered for the property taken shall be real, substantial, full, ample.[22]

However, the compensation, to be just, must be fair not only to the owner but also to the expropriator. Payment in excess of the full and fair equivalent of the loss sustained by the owner, being prejudicial to the public, will not satisfy the requirement of just compensation.

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[21] Murrav v. La Guardia. 52 N.E. 884.

[21a] 222 SCRA 173.

[22] Manila Railroad Co. v. Velasquez, 32 Phil. 286.

According to *Knecht v. Court of Appeals,*[22a] the term "owner" as applied in eminent domain cases refers to all those who have lawful interest in the property to be condemned, including a mortgagee, a lessee and a vendee in possession under an executory contract.

To ascertain just compensation, the court should determine first the actual or basic value of the property. Where the entire property is not expropriated, there should be added to the basic value the owner's consequential damages after deducting therefrom the consequential benefits arising from the expropriation. If the consequential benefits exceed the consequential damages, these items should be disregarded altogether as the basic value of the property should be paid in every case.[23]

The basic or market value of the property is the price that may be agreed upon by parties willing but not compelled to enter into a contract of sale.[24] Not unlikely, a buyer desperate to acquire a piece of property would agree to pay more, and a seller in urgent need of funds would agree to accept less, than what it is actually worth. The price agreed upon in these situations would not represent the market value of the property.

Among the factors to be considered in arriving at the fair market value of the property are the cost of acquisition, the current value of like properties, its actual or potential uses, and in the particular case of lands, their size, shape or location and the tax declarations thereon.

Consequential damages consist of injuries directly caused on the residue of the private property taken by reason of the expropriation. Where, for example, the expropriator takes only part of a parcel of land, leaving the remainder with an odd shape or area as to be virtually unusable, the owner can claim consequential damages. On the other hand, if the remainder is as a result of the expropriation placed in a better location, such as fronting a street where it used to be an interior lot, the owner will enjoy consequential benefits which should be deducted from the consequential damages. Consequential benefits, like consequential damages, must be direct and particular and not merely shared with the rest of the properties in the area, as where there is a general appreciation of land values because of the public use to which the condemned properties are devoted.

[22a] 297 SCRA 754.

[23] *Ibid.;* Rule 67, Sec. 6, Rules of Court.

[24] City of Manila v. Estrada, 25 Phil. 208.

There were several decrees promulgated by President Marcos providing that the just compensation for property under expropriation should be either the sworn valuation made by the owner or the official assessment thereof, whichever was lower. In *National Housing Authority v. Reyes*,[25] the Supreme Court applied this rule on the ground, according to Chief Justice Fernando, that its constitutionality should be presumed as it had not been challenged. In *Export Processing Zone Authority v. Dulay*,[26] however, these decrees were invalidated and the *Reyes Case* was reversed, the Supreme Court holding through Justice Gutierrez:

> The method of ascertaining just compensation under the aforecited decrees constitutes impermissible encroachment on judicial prerogatives. It tends to render this Court inutile in a matter which under the Constitution is reserved to it for final determination.

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[25] 123 SCRA 245.

[26] 149 SCRA 305 (1987).

> Thus, although in an expropriation proceeding the court technically would still have the power to determine the just compensation for the property, following the applicable decrees, its task would be relegated to simply *stating* the lower value of the property as declared either by the owner or the assessor. As a necessary consequence, it would be useless for the court to appoint commissioners under Rule 67 of the Rules of Court. Moreover, the need to satisfy the due process clause in the taking of private property is seemingly fulfilled since it cannot be said that a judicial proceeding was not had before the actual taking. However, the strict application of the decrees during the proceedings would be nothing short of a mere formality or charade as the court has only to choose between the valuation of the owner and that of the assessor, and its choice is always limited to the lower of the two. The court cannot exercise its discretion or independence in determining what is just or fair. Even a grade school pupil could substitute for the judge insofar as the determination of constitutional just compensation."
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> x x x x
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> In the present petition, we are once again confronted with the same question of whether the courts under P.D. 1533, which contains the same provision on just compensation as its predecessor decrees, still have the power and authority to determine just compensation, independent of what is stated by the decree and to this effect, to appoint commissioners for such purpose.
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> This time, we answer in the affirmative.
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> x x x x
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> It is violative of due process to deny the owner the opportunity to prove that the valuation in the tax documents is unfair or wrong. And it is repulsive to the basic concepts of justice and fairness to allow the haphazard work of a minor bureaucrat or clerk to absolutely prevail over the judgment of a court promulgated only after expert commissioners have actually viewed the property, after evidence and arguments pro and con have been presented, and after all factors and considerations essential to a fair and just determination have been judiciously evaluated.

Although it has been held in many cases that the just compensation must be paid in money and no other, this traditional view was not followed in the *CARP Cases,*[26a] where the Supreme Court adopted a more pragmatic stance and relaxed the strict orthodox requirement in favor of the practical method of payment devised by the legislature.

The Court observed:

> It cannot be denied from these cases that the traditional medium for the payment of just compensation is money and no other. And so, conformably, has just compensation been paid in the past solely in that medium. However, we do not deal here with the *traditional* exercise of the power of eminent domain. This is not an ordinary expropriation where only a specific property of relatively limited area is sought to be taken by the State from its owner for a specific and perhaps local purpose. What we deal with here is a *revolutionary* kind of expropriation.
>
> The expropriation before us affects *all* private agricultural lands wherever found and of whatever kind as long as they are in excess of the maximum retention limits allowed their owners. This kind of expropriation is intended for the benefit not only of a particular community or of a small segment of the population but of the entire Filipino nation, from all levels of our society, from the impoverished farmer to the landglutted owner. Its purpose does not cover only the whole territory of this country but goes beyond in time to the foreseeable future, which it hopes to secure and edify with the vision and the sacrifice of the present generation of Filipinos. Generations yet to come are as involved in this program as we are today, although hopefully only as beneficiaries of a richer and more fulfilling life we will guarantee to them tomorrow through our thoughtfulness today. And, finally, let it not be forgotten that it is no less than the Constitution itself that has ordained this revolution in the farms, calling for a just distribution' among the farmers of lands that have heretofore been the prison of their dreams but can now become the key at last to their deliverance.
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> Such a program will involve not mere millions of pesos. The cost will be tremendous. Considering the vast areas of land subject to expropriation under the laws before us, we estimate that hundreds of billions of pesos will be needed, far more indeed than the

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[26a] *Supra.*

amount of P50 billion initially appropriated, which is already staggering as it is by our present standards. Such amount is in fact not even fully available in cash at this time.

We assume that the framers of the Constitution were aware of this difficulty when they called for agrarian reform as a top priority project of the government. It is a part of this assumption that when they envisioned the expropriation that would be needed, they also intended that the just compensation would have to be paid not in the orthodox way but by a less conventional if more practical method. There can be no doubt that they were aware of the financial limitations of the government and had no illusions that there would be enough money to pay in cash and in full for the lands they wanted to be distributed among the farmers. We may therefore assume that their intention was to follow such manner of payment as is now provided for by the CARP Law, particularly the payment of the balance (if the owner cannot be paid with money), or indeed of the entire amount of the just compensation, with other things of value. We may also suppose that what they had in mind was a similar scheme of payment as that prescribed in P.D. No. 27, which was the law in force at the time they deliberated on the new Charter and with which they presumably agreed in principle.

The Court has not found in the records of the Constitutional Commission any categorical agreement among the members regarding the meaning to be given the concept of just compensation as applied to the comprehensive agrarian reform program being contemplated. There was the suggestion to fine tune' the requirement to suit the demands of the project even as it was also felt that they should leave it to Congress' to determine how payment should be made to the landowner and reimbursement required from the farmer-beneficiaries. Such innovations as 'progressive compensation' and 'State-subsidized compensation' were also proposed. In the end, however, no special definition of the just compensation for the lands to be expropriated was reached by the Commission. (Record of the Constitutional Commission, Vol. 2, pp. 647; Vol. 3, pp. 16-20, 243-247.)

On the other hand, there is nothing in the records either that militates against the assumptions we are making of the general sentiments and intention of the members on the content and manner of the payment to be made to the landowner in the light of the magnitude of the expenditure and the limitations of the expropriator.

> With these assumptions, the Court hereby declares that the content and the manner of the just compensation provided for in the afore-quoted Section 18 of the CARP Law is not violative of the Constitution. We do not mind admitting that a certain degree of pragmatism has influenced our decision on this issue, but after all this Court is not a cloistered institution removed from the realities and demands of society or oblivious to the need for its enhancement. The Court is as acutely anxious as the rest of our people to see the goal of agrarian reform achieved at last after the frustrations and deprivations of our peasant masses during all these disappointing decades. We are aware that invalidation of the said section will result in the nullification of the entire program, killing the farmer's hopes even as they approach realization and resurrecting the spectre of discontent and dissent in the restless countryside. That is not in our view the intention of the Constitution, and that is not what we shall decree today.

The property taken should be assessed as of the time of the taking, which usually coincides with the commencement of the expropriation proceedings.[27] Where entry precedes the filing of the complaint for expropriation, the assessment should be made as of the time of entry.

In the *Castellvi Case,* the property was enhanced considerably because of the improvements introduced by the government during the period it was in possession thereof under the contract of lease. The government therefore argued that the property should be assessed as of the time of commencement of the lease in 1947, so as to exclude the said improvements in the appraisal. As previously observed, the Supreme Court held that there was no taking during that year. The property was deemed taken only when expropriation proceedings were commenced in 1959, and it was as of that year that the just compensation was ascertained.

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[27] Republic v. Castellvi, *supra;* but see Municipality of Daet v. Court of Appeals, 93 SCRA 503.

In *Commissioner of Public Highways v. Burgos,*[28] just compensation was determined in 1973 as of the time of the taking of the expropriated property in 1924. However, the Supreme Court did not apply Article 1250 of the Civil Code calling for the adjustment of the peso rate in times of extraordinary inflation or deflation because in eminent domain cases "the obligation to pay arises from law, independent of contract."

The owner is entitled to payment of interest from the time of the taking until just compensation is actually paid to him.[29] Interests must be claimed, however, or are deemed waived.[30] Taxes paid by him from the time of the taking until the transfer of title, during which he did not enjoy any beneficial use of the property, are reimbursable by the expropriator.[31]

In *Republic v. Lim,*[31a] the decision in the expropriation proceedings became final in the late 1940s but the owners remained unpaid for the property for more than 50 years. The Supreme Court held through Justice Angelina Sandoval-Gutierrez.:

> In summation, while the prevailing doctrine is that 'the non-payment of compensation does not entitle the private landowner to recover possession of the expropriated lots, however, in cases where the government failed to pay the compensation within five years from the finality of the judgment in the expropriation proceedings, the owner concerned shall have the right to recover possession of their property. This is in connection with the principle that 'the government cannot keep the property and dishonor the judgment.' To be sure, the five-year period limitation will encourage the government to pay just compensation punctually. This is in keeping with justice and equity. After all,

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[28] 96 SCRA 831.

[29] Urtula v. Republic, 22 SCRA 477.

[30] *Ibid.*

[31] City of Manila v. Roxas, 60 Phil. 215.

[31a] 462 SCRA 265.

> it is the duty of the government whenever it takes property from private persons against their will, to facilitate payment of just compensation. In *Coscolluela v. Court of Appeals*, we defined just compensation as not only the correct determination of the amount to be paid to the property owner but also the payment of the property within a reasonable time. Without prompt payment, compensation cannot be considered just."

Finally, it should be stressed that title to the property shall not be transferred until after actual payment of just compensation is made to the owner.[32]

Suggested Reading:

City of Manila v. Chinese Community, 40 Phil. 349

United States v. Causby, 328 U.S. 256

People v. Fajardo, 104 Phil. 443

Richards v. Washington Terminal, 233 U.S. 546

Republic v. Castellvi, 58 SCRA 336

Visayan Refining Co. v. Camus, 40 Phil. 550

Guido v. Rural Progress Administration, 84 Phil. 847

Manila Railroad Co. v. Velasquez, 32 Phil. 286.

Municipality of Daet v. Court of Appeals, 93 SCRA 503

NHA v. Reyes, 123 SCRA 245

Mataas na Lupa Tenants Association v. Dimayuga, 130 SCRA 30

Export Processing Zone Authority v. Dulay, 148 SCRA 305

Association of Small Landowners v. Secretary of Agrarian Reform, 175 SCRA 343

Philippine Press Institute v. Commission on Elections, 244 SCRA 272

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[32] Visayan Refining Co. v. Camus, 40 Phil. 550.

Chapter 7

TAXATION

Nature

"TAXES are the enforced proportional contributions from persons and property, levied by the State by virtue of its sovereignty, for the support of government and for all public needs."[1] Taxation is the method by which these contributions are exacted.

As unwelcome as taxation may be to the individual who has to part with some of his money as his share in the support of the government, it is still a much better alternative to the only other method of raising revenues to defray public expenses. This would be the arbitrary exaction of contributions by the authorities from the special objects of their ire, vindictiveness, malice or caprice. In the case of taxation, there is at least an effort to apportion the costs of government among the people, according to their ability to pay and on the basis of as scientific a classification as possible. There would be no random selection of the contributors at the whim of the ruler but an equitable sharing among the people of the expenses to be incurred for their common protection and benefit.

The importance of taxation derives from the unavoidable obligation of the government to protect the people and extend them benefits in the form of public projects and services. In exchange for these, the people are subjected to the reciprocal duty of sharing the expenses to be incurred therefor through the payment by them of taxes.

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[1] Cooley, Taxation, 4th ed., Sec. 1.

The obligation to pay taxes is not based on contract. It is a duty imposed upon the individual by the mere fact of his membership in the body politic and his enjoyment of the benefits available from such membership. Hence, except only in the case of poll taxes,[2] nonpayment of a tax may be the subject of criminal prosecution and punishment. The accused cannot invoke the prohibition against imprisonment for debt as taxes are not considered debts.

Taxes are distinguished from licenses in the sense that the former are levied to raise revenues whereas the latter are imposed for regulatory purposes only. Licenses are justified under the police power, and the amount of the fees required is usually limited only to the cost of regulation. The exception is where the business licensed is nonuseful and is sought to be discouraged by the legislature, in which case a high license fee may be imposed.

Scope

So pervasive is the power of taxation that it reaches even the citizen abroad and his income earned from sources outside his State. In other cases, all income earned in the taxing State, whether by citizens or aliens, and all immovable and tangible personal properties found in its territory, as well as tangible personal property owned by persons domiciled therein, are subject to its taxing power. Even shares of stock issued by a foreign corporation, but "in action" in the local State may be taxed by it,[3] as so too are the proceeds from an insurance policy issued abroad.[4]

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[2] Art. III, Sec. 20, Constitution.

[3] Wells Fargo v. Collector of Internal Revenue, 40 O.G. 159.

[4] Manila Electric Co. v. Yatco, 69 Phil. 89.

Speaking of its well-nigh absolute scope, Chief Justice John Marshall of the U.S. Supreme Court once declared: "The power to tax includes the power to destroy." This dictum was to be refuted later by Justice Holmes with the pronouncement that "the power to tax does not include the power to destroy as long as this Court sits." Both statements may be regarded as correct, but from different viewpoints.

The power to tax may include the power to destroy if it is used validly as an implement of the police power in discouraging and in effect ultimately prohibiting certain things or enterprises inimical to the public welfare. Thus, if massage parlors are found to be mere fronts for prostitution, they may be subjected to such onerous taxes as to practically force them to stop operating. A similar imposition, for the same purpose, may be levied upon non-useful businesses or things, like pool halls, slot machines, or idle lands.

But where the power to tax is used solely for the purpose of raising revenues, the modern view is that it cannot be allowed to confiscate or destroy. If this is sought to be done, the tax may be successfully attacked as an inordinate and unconstitutional exercise of the discretion that is usually vested exclusively in the legislature in ascertaining the amount of the tax.

Exercise

The power of taxation is inherent in the State. Primarily vested in the national legislature, it may now also be exercised by the local legislative bodies, no longer by virtue of a valid delegation as before but pursuant to a direct authority conferred by Article X, Section 5, of the Constitution, which provides that *"each local government unit shall have the power to create its own sources of reve-*

nue and to levy taxes, fees and charges, subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy."

Not only the amount of the tax but also such other questions as whether or not to tax in the first place, or whom or what to tax, or for what purpose, are likewise subject to the discretion of the legislature. As usual, however, such discretion is not unlimited. Its exercise may be reversed in proper cases, specifically when it violates the due process and equal protection clauses or the particular restrictions on the power of taxation as prescribed in Article VI, Section 28, of the Constitution.

Due Process and Taxation

Like all government powers, taxation is subject to the requirements of due process. It has already been observed that taxes will not be allowed if they are confiscatory, except where they are intended precisely for destruction as an instrument of the police power. A tax, for example, that would claim 80 percent of a person's net income would be clearly oppressive and could unquestionably be struck down as a deprivation of his property without due process of law. A property tax retroacting to as long as fifty years back would be tyrannical and unrealistic, as the property might not yet have been then in the possession of the taxpayer nor, presumably, would he have acquired it had he known of the tax to be imposed on it. The so-called "tax on knowledge," such as one imposed on any periodical that exceeds a maximum number of copies per issue, would also be unconstitutional as an unauthorized impairment of liberty in violation of due process and freedom of expression.[5]

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[5] Grosjean v. American Press Co., 297 U.S. 233.

From the procedural viewpoint, due process does not require previous notice and hearing before a law prescribing fixed or specific taxes on certain articles may be enacted. But where the tax to be collected is to be based on the value of the taxable property, the taxpayer is entitled to be notified of the assessment proceedings and to be heard therein on the correct valuation to be given the property. Otherwise, the *ad valorem* tax may be increased to the prejudice of the owner in the *ex parte* appraisal to be made by the government authorities.

Equal Protection and Taxation

Taxation is subject to the general requirements of the equal protection clause. Additionally, it is provided in the Constitution that *"the rule of taxation shall be uniform and equitable."*[6]

Uniformity in taxation means that persons or things belonging to the same class shall be taxed at the same rate.[7] Thus, if cigarettes are classified into local and imported, there is observance of the uniformity rule if all local cigarettes are taxed at P12.00 per carton, regardless of value, and all imported cigarettes are taxed at P20.00 per carton, also regardless of value.

This should be distinguished from equality in taxation, which simply means that the tax shall be strictly proportional to the relative value of the property.[8] Thus, even if two residential lots of equal area are taxed at the same rate, the resultant taxes would not be the same if one of the lots is in an exclusive neighborhood and the other lot costs less because it is in a cheaper locality.

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[6] Article VI, Sec. 28(1), Constitution.

[7] De Villata v. Stanley, 32 Phil. 541.

[8] *Ibid.*

The above rules require a valid classification in the selection of the objects of taxation. Higher taxes may be imposed on commercial or industrial lands than on residential lands, or on practitioners in urban centers than in rural areas, or on luxury items than on prime commodities, or on non-useful enterprises than on useful enterprises, or on persons with high income than on those with low income. But taxes cannot be based on, say, differences in the color of one's skin or ethnic origin as these are not regarded as substantial distinctions.

It is also provided that the rule of taxation shall be equitable.[9] Equitable taxation connotes that taxes should be apportioned among the people according to their capacity to pay.

Double Taxation

There is no provision in the Constitution specifically prohibiting double taxation. Our Supreme Court has not categorically held that double or multiple taxation is prohibited in our jurisdiction. Justice Holmes is authority for the view that double taxation is no more prohibited than doubled taxation, as when a thing is taxed once at P250.00 and taxed again at another P250.00 while a similar thing is taxed only once at P500.00. "The power to tax twice," it is said, "is as ample as to tax once."[10]

There is double taxation when additional taxes are laid on the same subject by the same taxing jurisdiction during the same taxing period and for the same purpose.[11] Thus, if a person's properties are each taxed separately and thereafter all of them are again taxed, this time collectively, by the same taxing jurisdiction for the same purpose and during the same taxing period, the second imposition would constitute double taxation.

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[9] Art. VI, Sec. 28(1), Constitution.

[10] Cooley on Taxation, Vol. I, 4th ed., p. 48.

[11] *Ibid.*, pp. 475-476.

In *Punzalan v. Municipal Board of Manila,*[12] the defendant levied an additional tax of P25.00 on professionals practicing in Manila who were already paying the P50.00 occupation tax required under the Revised Internal Revenue Code. The petitioners challenged the second tax as double taxation and asked that it be annulled. The Supreme Court held against them, observing that the two taxes had been imposed by different jurisdictions, one by the national government and the other by the city government.

Despite the lack of a specific prohibition, however, double taxation will not be allowed if it results in a violation of the equal protection clause. Hence, if certain properties are subjected to an additional tax whereas others similarly situated are not similarly taxed, the owners of the first properties would have a right to complain.

In the *Punzalan Case,* the petitioners contended that they were being discriminated against because other professionals practicing elsewhere were not subjected to the additional tax. The Supreme Court disagreed, holding that there was a substantial distinction between them and the other professionals as practitioners in Manila could expect a more lucrative income than those in other parts of the country.

Public Purpose

To sustain a tax, it is necessary to show that the proceeds are devoted to a public purpose. Revenues derived from taxes cannot be used for purely private purposes or for the exclusive benefit of private persons.

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[12] 95 Phil. 46.

Like public use in eminent domain, the phrase "public purpose" as applied to taxation is now given the broadest interpretation so as to include even indirect public advantage or benefit. The mere fact that the tax will be directly enjoyed by a private individual does not make it invalid so long as some link to the public welfare is established.

Thus, pensions paid to war veterans are sustainable on the ground that they will encourage emulation of their services by others assured that their own patriotism will be acknowledged and rewarded by a grateful government. Unemployment relief, support for the handicapped, and care of the aged, are also allowed as these matters, if left unattended by the government, are likely to create social problems that will affect the rest of the community. Scholarships for poor but deserving students, prizes and other incentives for gifted citizens, and subsidies for educational programs are likewise justified under the constitutional mandate for the promotion of the welfare and capabilities of the youth and the development of culture. The use of tax revenues for the support of particular industries vital to the national economy, the clearance of slums for the construction of homesites for deserving citizens, and the payment of retirement or death gratuities to civil servants or their heirs are also considered valid public purposes.

The more obvious illustrations of public purpose would, of course, be such projects as the construction of roads and bridges, the establishment of schools, museums, parks and playgrounds, the erection of public buildings, and the maintenance of government services in general, all of which inure to the direct benefit and enjoyment of the people.

Tax Exemptions

Tax exemptions are either constitutional or statutory.

The constitutional exemption from taxes is provided for in Article VI, Section 28(3), as follows:

> Charitable institutions, churches, and parsonages or convents appurtenant thereto, mosques, non-profit cemeteries, and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes shall be exempt from taxation.

Exemption is granted religious and charitable institutions because they give considerable assistance to the State in the improvement of the morality of the people and the care of the indigent and the handicapped. These are ministrant functions of the government which, however, it is not able to fully discharge. The above provision is intended to make it easier for these institutions to pursue these laudable objectives without the impediment of taxes that they otherwise would have to shoulder. The added justification in the case of religious institutions is the principle of separation of Church and State and the necessity to give full rein to the freedom of religious profession and worship. The privilege was withdrawn from educational institutions by the 1973 Constitution but is now restored in the above provision.

The provision now requires that the lands, buildings or improvements be directly, actually and exclusively devoted to religious, charitable or educational purposes to be entitled to exemption. Under the 1935 Constitution, it was enough that they were at least incidentally devoted to these purposes.

In *Lladoc v. Commissioner of Internal Revenue*,[13] a parish priest accepted a donation of P10,000.00, to be used for the construction of a church. The money was spent for the purpose specified. Later, the Bureau of Internal Revenue imposed a donee's tax on his successor, who objected, invoking the constitutional exemption of church properties from taxes. The Supreme Court rejected his contention, holding that the exemption referred only to property taxes imposed on lands, buildings and improvements used for religious purposes. The tax in this case was not an *ad valorem* tax on the church itself but an excise tax imposed on the priest for his exercise of the privilege to accept the donation.

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[13] 14 SCRA 292.

> Sec. 22(3) of Art. VI of the Constitution exempts from taxation cemeteries, churches and parsonages or convents appurtenant thereto, and all lands, buildings and improvements used exclusively for religious purposes. The exemption is only from the payment of taxes assessed on such properties enumerated as property taxes as distinguished from excise taxes. In the present case, what the Commission assessed was a donee's gift tax; the assessment was not on the properties themselves. It did not rest upon general ownership; it was an excise tax upon the use made of the properties. Manifestly, a gift tax is not within the exemption provisions. A gift tax is not a property tax, but an excise tax imposed on the transfer of property by way of gift *inter vivos,* the imposition of which on property used exclusively for religious purposes does not constitute an impairment of the Constitution.

Statutory exemptions are granted in the discretion of the legislature. However, the Constitution provides that *"no law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress"*[14] This is because tax exemptions should not be lightly extended since they will represent a loss of revenue to the government.

Where the tax exemption is granted gratuitously, say in pursuance of an economic policy, it may be validly revoked at will, with or without cause. Thus, if the legislature grants a tax exemption to new and necessary industries for a period of ten years, it is not inhibited from withdrawing the grant even before the end of the prescribed period.

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[14] Art. VI, Sec. 28(4), Constitution.

But if the exemption is granted for valuable consideration, it is deemed to partake of the nature of a contract and the obligation thereof is protected against impairment. In *Casanova v. Hord*,[15] the Spanish Government, in exchange for certain obligations assumed by the plaintiff, deeded to him certain mines in accordance with the Royal Decree of May 14, 1987, which *inter alia* imposed a number of taxes than these herein mentioned shall be imposed." When pursuant to subsequent law the Bureau of Internal Revenue later sought to collect additional taxes from these mines, the Supreme Court declared: "It seems very clear to us that this deed constituted a contract between the Spanish Government and the plaintiff, the obligation of which contract was impaired by the enactment of Section 134 of the Internal Revenue Law above cited, thereby infringing" the impairment clause.

Suggested Reading:

Punzalan vs. Municipal Board, Manila, 95 Phil. 46

Lladoc v. Commissioner of Internal Revenue, 14 SCRA 292

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[15] 8 Phil. 125.

Chapter 8

DUE PROCESS OF LAW

IT IS SUGGESTED here, without levity albeit with no claim to originality, that due process had its beginnings in the Garden of Eden. The Bible tells us that when Adam and Eve disobeyed the stricture that they not eat of the forbidden fruit, God did not immediately punish them. The first thing the All-Knowing said was "Where art thou, Adam?"—thereby giving him notice. Then, the culprit timorously appearing, the Omniscient, Who did not need to be told, nevertheless inquired: "Didst thou eat of the forbidden fruit?"—thereby giving him a chance to be heard. The minimum rights to notice and hearing were thus first observed by the Eternal Judge, and in this way was the groundwork of justice and fair play established.

Origin of Due Process

Historically, the origins of due process are traceable to the Magna Carta, which was wrung by the barons from Prince John in 1215 and forever committed the English throne to the solemn vow that "no man shall be taken or imprisoned or disseized or outlawed, or in any manner destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land." Subsequently, in 1355, the more popular equivalent of the phrase "law of the land" was used for the first time when, in King Edward III's Statute 28, it was declared that "no man, of what state or condition whoever he be, shall be put out of his lands, or tenements, nor taken, nor imprisoned, nor indicted, nor put to death, without he be brought in to answer by *due process of law.*"

It is this immortal phrase that has resounded through the centuries as the formidable champion of life, liberty and property in all freedom-loving lands.

Evolution of Due Process

As late as in his argument in the famous *Dartmouth College Case,*[1] Daniel Webster was to declare that the law of the land meant "the general law, a law which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial." This statement was in accord with the original understanding of the guaranty, which called only for the observance of the procedure laid down by the law, regardless of its intrinsic validity. Parliament was legally omnipotent; its acts could not be abrogated by the King or annulled by the courts, and the law of the land as enacted by it was a limitation only on the monarch and his magistrates. Thus, if Parliament allowed an accused the right to trial by combat with his accuser, denial of this right from him would constitute a violation of due process even if the method itself was an absurd method of proving one's innocence. As long as the legislature willed it, it was the law of the land and therefore had to be obeyed.

When the due process guaranty was exported to the United States, however, it underwent a substantial transformation. A new form of government was established there providing for three separate branches among which legislative, executive and judicial powers were distributed. These departments were equal. Consequently, it was not long before Chief Justice John Marshall was asserting for the judiciary the power not only to see to it that the executive was enforcing the law properly but also to determine whether or not the law as enacted by Congress was valid in the first place. Due process thus assumed another facet, to wit, the substantive, as a limitation on the legislature itself.

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[1] Dartmouth College v. Woodward, 4 Wheaton 518.

The safeguard as thus expanded is the due process guaranteed by our Constitution, whose Bill of Rights was patterned after the American Constitution. Hence, as in the United States, due process of law in our country also has a dual aspect: the substantive and the procedural.

Meaning of Due Process

The constitutional safeguard of due process is briefly worded thus:

> No person shall be deprived of life, liberty or property without due process of law.[2]

Ideally, the provisions of the Constitution should be precise or definite so as to leave no room for ambiguity that may lead to controversies on their proper interpretation. In the case of the due process clause, however, no attempt was made to spell out its meaning or to define the concept with some degree of exactitude. This particularization was in fact suggested in the 1934 Constitutional Convention but the suggestion was rejected by Delegate Jose P. Laurel, chairman of the committee on the Bill of Rights. His reason was that a precise definition of due process might prove constricting and prevent the judiciary from adjusting it to the circumstances of particular cases and to the ever-changing conditions of society. This was accepted by the body.

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[2] Art. III, Sec. 1, Constitution.

Due process therefore continues to be dynamic and resilient, adaptable to every situation calling for its application. The very elasticity of the provision makes this possible and thus enlarges the rights of the individual to his life, liberty and property. Knowing this, courts have also hesitated to provide their own specification of the guaranty that might confine them in a legal strait jacket, preferring instead to have the meaning of the phrase "gradually ascertained by the process of inclusion and exclusion in the course of the decisions of cases as they arise."[3]

Thus, our Supreme Court, speaking through Justice Fernando, would describe due process merely as "responsiveness to the supremacy of reason, obedience to the dictates of justice."[4] A more flexible definition is that given by Justice Frankfurter of the U.S. Supreme Court, who would regard it as nothing more and nothing less than "the embodiment of the sporting idea of fair play."[5] As will be noted, the language in both definitions is general enough as to provide for sufficient judicial elbow room, so to speak.

Due process is a guaranty against any arbitrariness on the part of the government, whether committed by the legislature, the executive, or the judiciary. If the law itself unreasonably deprives a person of his life or his liberty or his property, he is denied the protection of due process. If the enjoyment of his rights is conditioned on an unreasonable requirement, due process is likewise violated. Whatsover be the source of such rights, be it the Constitution itself or merely a statute, its unjustified withholding would also be a violation of due process. Any government act that militates against the ordinary norms of justice or fair play is considered an infraction of the great guaranty of due process; and this is true whether the denial involves violation merely of the procedure prescribed by the law or affects the very validity of the law itself.

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[3] Twinning v. New Jersey, 211 U.S. 78.

[4] Ermita-Malate Hotel & Motel Operators Assn. v. City of Manila, 20 SCRA 849.

[5] Frankfurter, Mr. Justice Holmes and the Supreme Court, pp. 32-33.

Person

The due process clause protects all persons, natural as well as artificial. Natural persons include both the citizen and the alien. Thus, in *Villegas v. Hiu Chong,*[6] the Supreme Court annulled a city ordinance requiring aliens to obtain a work permit from the mayor as a pre-condition for employment, holding that "while it is true that the Philippines as a State is not obliged to admit aliens within its territory, once an alien is admitted, he cannot be deprived of life without due process of law. This guarantee includes the means of livelihood."

Artificial persons like corporations and partnerships are also covered by the protection but only insofar as their property is concerned.[7] The reason for the narrower scope is that the life and the liberty of the artificial person, as a creature of law, are derived from and therefore subject to the control of the legislature.

Deprivation

To deprive is to take away forcibly, to prevent from possessing, enjoying or using something."[8] As applied to due process, deprivation connotes denial of the right to life, liberty or property.

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[6] 86 SCRA 270.

[7] Smith, Bell & Co. v. Natividad, 40 Phil. 136.

[8] Webster's New World Dictionary, 3rd ed., p. 395.

Deprivation *per se* is not necessarily unconstitutional. What is prohibited is deprivation of life, liberty or property *without due process of law*.

A person's life may be validly claimed by the law, as when he is required to render services in defense of the State or when it is declared forfeited for commission of a heinous offense. On the other hand, there would be unlawful deprivation if he were sentenced to death for conviction of a petty offense as the disparity between crime and punishment would make the law unreasonable. So also would a law be arbitrary if it required the execution of persons mentally or physically handicapped even if the purpose be to improve or preserve the beauty and vitality of the race.

There is no unlawful deprivation of liberty where a person afflicted with a communicable disease is confined in a hospital or quarantined in his own home, or where a criminal is punished with imprisonment. Restriction of liberty would also be valid where the carrying of unlicensed firearms is prohibited or minors are not allowed to drink intoxicating beverages, or individuals are required to first pass the corresponding government examinations before they may practice their professions. Conversely, it will be violative of due process if a person is imprisoned without trial, or is prevented from criticizing the government in the exercise of his freedom of expression, or is forced to follow a particular religion.

Private property may be validly taken where it is offensive to the public welfare, like a building on the verge of collapse, which may be demolished under the police power in the interest of the public safety. It may also be expropriated, after payment of just compensation, so it may be devoted to some public use; or it may be distrained and levied upon in case of tax delinquency of its owner.

However, there would be unlawful deprivation if one's property is destroyed by the authorities even if it is not noxious or intended for a noxious purpose, or is taken from him without just compensation or is regulated in such an arbitrary manner as to deprive him of its lawful enjoyment and use. In a case previously cited, the Supreme Court annulled as confiscatory a municipal ordinance prohibiting the construction on residential land of any building that might obstruct the view of the public plaza from the highway.[9]

Life

Life as understood under the due process clause connotes in the first place the integrity of the physical person. The meaning is that it is not permissible for the government to deprive the individual of any part of his body, and this is true even if it be as punishment for crime. Accordingly, it will be unlawful to amputate his hands if he is a thief or castrate him if he is a rapist or strike out his eyes for unjust vexation or cut off his tongue for objectionable remarks he may have made. Any measure that would even only endanger his health or subject him to unnecessary pain or to unreasonable physical exertion, would also be subject to challenge. Thus, in sustaining the law requiring the sterilization of incurable hereditary imbeciles, the U.S. Supreme Court observed in *Buck v. Bell*,[10] that the operation only involved "a minimum of pain, or none at all," and did not endanger the imbecile's life or health.

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[9] People v. Fajardo, 104 Phil. 443.

[10] 274 U.S. 200.

But the term, according to our Supreme Court, "should not be dwarfed into mere animal existence."[11] In fact, the word should embrace the enjoyment by the individual of all the God-given faculties that can make his life worth living. Included in the guaranty therefore would be his right to give full rein to all his natural attributes, to expand the horizons of his mind, to widen the reach of his capabilities, to enhance those moral and spiritual values that can make his life more meaningful and rewarding. The right of reproduction, for example, and the resultant savoring of the joys of parenthood, are part of the life vouchsafed to the individual under due process of law.

Liberty

According to Mabini, "liberty is the freedom to do right and never wrong."[12] Liberty, as guaranteed under the due process clause, is not unbridled license; it is liberty regulated by law. A person is free to act but he may exercise his rights only in such manner as not to injure the rights of others. One's own liberty must be enjoyed consistently with the enjoyment of a like liberty by others. In other words, the individual, as a creature of society, should be prepared to surrender part of his freedom for the benefit of the greater number in recognition of the time-honored principle of *"salus populi est suprema lex."*

Thus, to illustrate, one's freedom of expression cannot be used to unfairly destroy another's reputation, or to incite rebellion, or to offend public morals; neither may he abuse the sanctity of his home by converting it into a den of criminality or a hotbed of disease; nor may he insist on selling his goods at black market prices, if they be prime necessities, to the detriment of the consuming public.

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[11] Rubi v. Prov. Board of Mindoro, 39 Phil. 660.

[12] *Ibid.*

Subject only to the reasonable restrictions of the law, a person is free to do as he pleases. He may marry for love or for money, pursue a profession or engage in manual labor, establish his own business or merely hire out as an employee, isolate himself from the community or mix with his neighbors, profess a religion or embrace atheism—in short, do anything that does not offend the public welfare.

Property

Property is anything that can come under the right of ownership and be the subject of contract. This will include all things—real, personal, tangible and intangible—that are within the commerce of man, like lands, jewelry, automobiles, buildings, goodwill, inheritance, intellectual creations, future earnings, works of art, animals, mortgages, insurance proceeds, etc.

However, one cannot have a vested right to a public office, as this is not regarded as property. If created by statute, it may be abolished by the legislature at any time, even if the term of the incumbent therein has not yet expired. And the same observation may be made of the salary attached to it, which may be reduced or even completely withdrawn without violation of due process[13] although this will cause prejudice to the office-holder. The only exception is where the salary has already been earned, in which case it cannot be reduced or withdrawn by a retroactive law as the said salary has already accrued as a property right.[13a]

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[13] *Id.*

[13a] Mississippi v. Miller, 276 U.S. 174.

It has also been held that mere privileges, such as a license to operate a cockpit[14] or a liquor store,[15] are not property rights and are therefore revocable at will. Likewise, one does not have a vested property right in the continued operation of a law, which may be repealed or amended at will by the legislature, or in the maintenance of a judicial doctrine, which may be modified or reversed in the discretion of the Supreme Court. Such changes may be validly made regardless of adverse consequences upon any person who may have previously acted thereunder.

Substantive Due Process

Substantive due process requires the intrinsic validity of the law in interfering with the rights of the person to his life, liberty or property. The inquiry in this regard is not whether or not the law is being enforced in accordance with the prescribed manner but whether or not, to begin with, it is a proper exercise of legislative power.

To be so, the law must have a valid governmental objective, *i.e.*, the interests of the public generally as distinguished from those of a particular class require the intervention of the State. Furthermore, this objective must be pursued in a lawful manner, or, in other words, the means employed must be reasonably related to the accomplishment of the purpose and not unduly oppressive.

In *Nebbia v. State of New York*,[16] for example, it was held by the U.S. Supreme Court that a law prohibiting the sale of milk for less than the specified minimum or floor price was not violative of substantive due process. The cutthroat competition then going on between the small and big dairy companies in that state would, if left unchecked, result in the deterioration of the quality of the milk they were selling, owing to the need to reduce their overhead, to the detriment of the public health.

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[14] Pedro v. Prov. Board of Rizal, 53 Phil. 123.

[15] Board v. Barrio, 24 N.Y. 659.

[16] 291 U.S. 502.

By contrast, a law was annulled as violative of substantive due process where it was shown that the rates prescribed by it for railroad companies, while allowing them some profit, did not permit them a reasonable return of their investments.[17]

In *Kwong Sing v. City of Manila,*[18] a municipal ordinance requiring all laundry establishments to issue their receipts in English or Spanish was challenged by the petitioner on the ground that it was oppressive. His claim was that he did not know any of the prescribed languages and would have to employ more help, at added expense to him, in order to comply with the requirement. The Supreme Court sustained the measure, noting that it was intended to protect the public from deceptions and misunderstandings that might arise from their accepting receipts in Chinese characters that they did not understand.

But in *Yu Cong Eng v. Trinidad,*[19] the U.S. Supreme Court, reviewing our own Supreme Court, sustained the invalidation of a law providing that "it shall be unlawful for any person, company or partnership or corporation engaged in commerce, industry or any other activity for the purpose of profit in the Philippine Islands, in accordance with existing law, to keep its account books in any language other than English, Spanish or any local dialect." In explaining the effects of the law, Chief Justice Taft declared *inter alia:*

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[17] Chicago, Milwaukee & St. Paul Railway v. Minnesotta, 134 U.S. 118.

[18] 41 Phil. 103.

[19] 271 U.S. 500.

> Of course, the Philippine government may make every reasonable requirement of its taxpayers to keep proper records of their business transactions in the English or Spanish or Filipino dialect by which an adequate measure of what is due from them in meeting the cost of government can be had. How detailed those records should be, we need not now discuss, for it is not before us. But we are clearly of opinion that it is not within the police power of the Philippine legislature, because it would be oppressive and arbitrary, to prohibit all Chinese merchants from maintaining a set of books in the Chinese language, and in the Chinese characters and thus prevent them from keeping advised of the status of their business and directing its conduct. As the petitioner, Yu Cong Eng, well said in his examination, the Chinese books of those merchants who know only Chinese and do not know English and Spanish (and they constitute a very large majority of all of them in the Islands), are their eyes in respect of their business. Without them such merchants would be a prey to all kinds of fraud and without possibility of adopting any safe policy. It would greatly and disastrously curtail their liberty of action, and be oppressive and damaging in the preservation of their property. We agree with the Philippine Supreme Court in thinking that the statute construed as we think it must be construed is invalid.

The difference between the *Kwong Sing* and *Yu Cong Eng* cases is that in the former the ordinance merely *required* the use of certain languages without prohibiting the use of others, whereas in the latter the law *prohibited* the use of any language other than those prescribed.

In *Ichong v. Hernandez*,[20] the petitioners sought the annulment of the Retail Trade Nationalization Law on the ground among others that it denied due process for depriving them of a legitimate means of livelihood. The Supreme Court held the law to be a valid exercise of the police power. Noting that the retail trade was at that time controlled by aliens, it ruled that the State was entitled to take adequate steps to relax the foreign stranglehold on a vital artery of the national economy. Justice Labrador declared: "The disputed law is deemed absolutely necessary to bring about the desired legislative objective—to free the national economy from alien control and dominance. If political independence is a legitimate aspiration of a people, then economic independence is nonetheless legitimate. Freedom and liberty are not real and positive if the people are subject to the economic control and domination of others, especially if not of their own race and country."

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[20] 101 Phil. 1155.

"The law is reasonable," he continued. "It is made prospective and recognizes the rights and privileges of those already engaged in the occupation to continue therein during the rest of their lives; and similar recognition is accorded associations of aliens," which were allowed a ten-year period of grace within which to wind up their affairs in the retail trade and transfer to other businesses.

Procedural Due Process

The essence of procedural due process is expressed in the immortal cry of Themistocles to Eurybiades: "Strike, but hear me first!" In more familiar words, the justice that procedural due process guarantees, to repeat with Daniel Webster, is the one "which hears before it condemns, which proceeds upon inquiry and renders judgment only after trial."

Our Supreme Court has held that "the twin requirements of notice and hearing constitute the essential elements of due process and neither of these elements can be eliminated without running afoul of the constitutional guaranty."[20a]

[20a] Vinta Maritime Co., Inc. v. NLRC, 284 SCRA 656.

tion of the fine going to the treasury of the village, of which he was also the mayor. It was held that such a law could hardly insure his impartiality since he stood to benefit, personally and officially, with every judgment of conviction he rendered.

Disqualification of judges is provided for under Rule 137 of the Rules of Court as follows:

DQ of judges

> Section 1. *Disqualification of judges.—No* judge or judicial officer shall sit in any case in which he or his wife or child is pecuniarily interested as heir, legatee, creditor, or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

In *Azul v. Castro,*[25] the Supreme Court required the trial judge to admit the answer of the petitioner who had been declared in default under very questionable circumstances and ordered an investigation of the claim that the proceedings were being orchestrated by an "unseen hand." And in *Paderanga v. Azura,*[25a] the judge was held to be inhibited from hearing the cases involving the petitioners in view of the pronounced hostility between him and the petitioners.

By competent court is meant one vested with jurisdiction over a case as conferred upon it by law. For example, a regional trial court is competent to try a prosecution for murder but not for violation of a municipal ordinance. The competent court in the latter case would be the metropolitan or municipal trial court. Only the Supreme Court is competent to review a decision of the Commission on Audit, but jurisdiction over ordinary appealed cases involving only questions of fact is vested in the Court of Appeals.

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[25] 133 SCRA 271.

[25a] 136 SCRA 266.

B. Jurisdiction

In actions *in personam,* such as a complaint for recovery of a loan, jurisdiction over the defendant is acquired by the court by his voluntary appearance or through service of summons upon him. This may be effected personally, or by substituted service, or, in exceptional cases, by publication.[26]

In actions *in rem* or *quasi in rem* such as land registration proceedings or the foreclosure of a real estate mortgage, the jurisdiction of the court is derived from the power it may exercise over the property. Jurisdiction over the person is not essential, provided the relief granted by the court is limited to such as can be enforced against the property itself. Notice by publication is sufficient in these cases.[27]

The reason is that property is always presumed to be in the possession of the owner or his agent, who may be safely held under certain conditions to know that proceedings have been instituted against it.[28] According to Cooley, "if the owners are named in the proceedings and personal notice is provided for, it is rather from tenderness to their interests, and in order to make sure that the opportunity for a hearing shall not be lost to them, than from any necessity that the case shall assume that form."[29]

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[26] Banco Español v. Palanca, *supra.*

[27] *Ibid.*

[28] *Id.*

C. Hearing

Notice to a party is essential to enable it to adduce its own evidence and to meet and refute the evidence submitted by the other party. Every litigant is entitled to his day in court. He has a right to be notified of every incident of the proceeding and to be present at every stage thereof so that he may be heard by himself and counsel for the protection of his interests.

As held in *David v. Aquilizan*,[30] a decision rendered without a hearing is null and void *ab initio* and may be attacked directly or collaterally.

In one case,[31] a person's certificate of title to a piece of land was annulled although she was not made a party to the proceeding. The Supreme Court declared that the decision could not in any way bind her because of the denial from her of the right to be heard.

"If it were otherwise," the Supreme Court declared, "then the cardinal requirement that no party should be made to suffer in person or property without being given a hearing would be brushed aside. The doctrine consistently adhered to by this Court when such a question arises . . . is that a denial of due process suffices to cast on the official act taken by whatever branch of the government the impress of nullity."

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[29] Cooley on Taxation, 2nd ed., 257.

[30] 94 SCRA 707.

[31] DBP v. Bautista, 26 SCRA 366.

In *Lorenzana v. Cayetano*,[32] in which the respondent questioned the validity of writs of demolition enforced against her, the Supreme Court held:

> It must be noted that respondent was not a party to any of the 12 ejectment cases wherein the writs of demolition had been issued; she did not make her appearance in and during the pendency of these ejectment cases. Respondent only went to court to protect her property from demolition after the judgment in the ejectment cases had become final and executory. Hence, with respect to the judgment in said ejectment cases, respondent remains a third person to such judgment, which does not bind her; nor can its writ of execution be enforced against her since was not afforded her day in court in said ejectment cases.

In *Caoile v. Vivo*,[33] it was held that the law does not require another notice and hearing for a review of the decision of the board of special inquiry on the basis of evidence previously presented. In *Lobete v. Sundiam*,[34] the right to appeal was held not unlawfully withheld where it was lost as a result of the appellant's neglect. Due process was also not denied the petitioner who received notice of the scheduled hearing the day before but failed to present evidence, according to *Marvel Bldg. Corporation v. Ople*,[35] A similar conclusion was reached in *Ablaza v. CIR*,[36] where it was established that the petitioners were adequately served the necessary notices and that they deliberately avoided acknowledgment of the service of summons upon them. It was also held, in *Valladolid v. Inciong*,[37] that there was no denial of due process where the regional director of the MOLE decided a case, which had to be summarily resolved in ten days, on the basis only of position papers submitted by the parties; and in *Anglo-Fil Trading Corporation v. Lazaro,*[38] where a restraining order issued *ex parte* was later dissolved *ex parte*. In *Cruz v. RCBC,*[39] the Supreme Court rejected the claim of denial of due process, it appearing that the petitioner had been given a chance to explain her side during the investigation of the charges against her. But in *Cordero v. Public Service Commission,*[40] mere notice by publication of a hearing conducted by an administrative agency was held insufficient and so violative of due process.

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[32] 78 SCRA 485.

[33] 125 SCRA 87

[34] 123 SCRA 95.

[35] 122 SCRA 405.

[36] 126 SCRA 246.

[37] 121 SCRA 205.

In *People v. Beriales,*[41] the lower court ordered the arraignment and trial of the accused pending reinvestigation of their case by the city prosecutor as previously authorized by the judge. The defense counsel did not cross-examine the witnesses presented by the private prosecutor and, after the prosecution had rested, refused to submit any evidence for the accused, reiterating his manifestation that the accused were not agreeing to the trial of the case unless they first received the report of the reinvestigation. Holding this position as a waiver by the accused of their right to defend themselves, the lower court considered the case submitted for decision and subsequently convicted all of them. On appeal, the sentence was set aside by the Supreme Court on the ground that the "serious irregularity" committed by the trial judge was "repugnant to the Due Process Clause of the Constitution."

Due process is not violated where a person is not heard because he has chosen, for whatever reason, not to be heard. If he opts to be silent where he has a right to speak, he cannot later be heard to complain that he was unduly silenced.[42]

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[38] 124 SCRA 494.

[39] 120 SCRA 15.

[40] 121 SCRA 249.

[41] 70 SCRA 361.

The Supreme Court has held, however, that:

> Due process as a constitutional precept does not, always and in all situations, require trial-type proceedings. The essence of due process is to be found in the reasonable opportunity to be heard and to submit any evidence one may have in support of one's defense. 'To be heard' does not only mean verbal arguments in court. One may be heard also through pleadings. Where opportunity to be heard, either through oral arguments or pleadings, is accorded, there is no denial of procedural due process.[42a]

The issue in *Marcos v. Garchitorena*[42b] was whether the petitioners could be declared in default in several ill-gotten wealth cases filed against them for their failure to file their answer despite valid substituted service of summons upon them. The Supreme Court said this could be done. "Anent the argument that due process requires the presence of the defendants as long as they desire to be present, let it be stated that the right of confrontation does not necessarily mean a physical face-to-face confrontation of the adversaries in the court. The right of confrontation merely means the right to be given an opportunity to cross-examine and this right of course can be done through the parties' counsel."

Justices Gutierrez, Cruz, Padilla, and Sarmiento dissented, all on the basis of due process. They were ultimately sustained when the default order was lifted by the Sandiganbayan and the lifting was affirmed by the Supreme Court in *Republic of the Philippines v. Sandiganbayan*.[42c]

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[42] Stronghold Ins. Co. v. Court of Appeals, 205 SCRA 605.

[42a] Zaldivar v. Sandiganbayan, 166 SCRA 316.

[42b] G.R. Nos. 90110-43, Feb. 22, 1990.

[42c] 239 SCRA 529 (1994).

1) Appeal

The right to appeal is not essential to the right to a hearing. Except when guaranteed by the Constitution, appeal may be allowed or denied by the legislature in its discretion. The requirements of due process are deemed satisfied as long as the litigant is given his day in court at the trial of his case, and he cannot demand as a matter of right another day in the appellate court.

But as long as the law allows him to appeal, denial of that remedy is a denial of due process. Furthermore, the legislature itself cannot deprive him of the right to appeal in those cases coming under the minimum appellate jurisdiction of the Supreme Court as specified in Article VIII, Section 5(2), of the Constitution, to wit:

(1) All cases in which the constitutionality or validity of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question.

(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(3) All cases in which the jurisdiction of any lower court is in issue.

(4) All criminal cases in which the penalty imposed is *reclusion perpetua* or higher.

(5) All cases in which only an error or question of law is involved.

In *Calano v. Cruz,*[43] for example, an appeal to the Supreme Court in an election protest involving municipal officials was challenged on the ground that it was not allowed by the Revised Election Code. The challenge was rejected because the appeal was based on a pure question of law, which came under the irreducible review powers of the Supreme Court.

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[43] 94 Phil. 230.

2) Exceptions

Nevertheless, there are cases in which the essential requisites of notice and hearing may be omitted without violation of due process. Among these are the cancellation of the passport of a person sought for the commission of a crime, the preventive suspension of a civil servant facing administrative charges, the distraint of properties for tax delinquency, the padlocking of restaurants found to be insanitary or of theaters showing obscene movies, and the abatement of nuisances *per se*.

a) Nuisances

A nuisance *per se* is objectionable under any and all circumstances because it presents an immediate danger to the welfare of the community. This kind of nuisance may be abated summarily, that is, without the necessity of judicial authorization. The classic example is that of a mad dog running loose, which can be killed on sight, regardless of its value, because of the threat it poses to the safety and lives of the people.

A nuisance *per accidens* is objectionable only under some but not all circumstances, there being situations when it is perfectly legitimate and acceptable. It has been described as "the right thing in the wrong place," like a *patis* factory in a residential area. The rule is that it may be abated only upon judicial authorization as it is difficult to ascertain or identify this kind of nuisance. The exception, as announced in *Lawton v. Steele*,[44] is where the legislature has authorized its summary abatement, provided the nuisance *per accidens* is of trifling value only.

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[44] 152 U.S. 133.

b) Presumptions

Would a statutory presumption deny the right to a hearing insofar as the person affected is precluded from introducing evidence to rebut the presumption? The accepted view is that it would not, provided there is a rational or natural connection between the fact proved and the fact ultimately presumed from such fact.[45] As long as the presumption is based on human experience, as where a child born within one hundred eighty days of the marriage is presumed legitimate if the husband, before such marriage, knew of the pregnancy of the wife,[46] it will be deemed not violative of due process.

D. Judgment

The right to a hearing would be meaningless if in the end the judge could disregard the evidence adduced by the parties and decide the case on the basis of his own unsupported conclusions. To insure against such arbitrariness, due process requires that the judgment be based upon the lawful hearing previously conducted. And to augment this requirement, Article VIII, Section 14, of the Constitution provides that *"no decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."*

(2) Administrative Due Process

In administrative proceedings, the requisites of procedural due process are the following:

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[45] Manley v. Georgia, 279 U.S. 1.

[46] Rule 131, Sec. 4(d), Rules of Court.

(1) The right to a hearing, which includes the right to present one's case and submit evidence in support thereof.

(2) The tribunal must consider the evidence presented.

(3) The decision must have something to support itself.

(4) The evidence must be substantial.

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The tribunal or body or any of its judges must act on its or his own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision.

(7) The board or body should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reason for the decision rendered.[47]

In the interesting case of *Zambales Chromite v. Court of Appeals,*[48] a decision rendered by the Director of Mines was appealed to the Secretary of Agriculture and Natural Resources. The Director of Mines was later promoted to Secretary of Agriculture and Natural Resources and in this capacity reviewed and, not surprisingly, affirmed his own decision. The Supreme Court annulled the proceedings, calling them "a mockery of justice."

Amazingly, a similar irregularity occurred in *Anzaldo v. Clave,*[49] when the respondent, as presidential executive assistant, affirmed his own decision as chairman of the

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[47] Ang Tibay v. CIR, 69 Phil. 635.

[48] 94 SCRA 261.

[49] 119 SCRA 353.

Civil Service Commission when it was appealed to Malacañang. The Supreme Court also withheld its approval.

Suggested Reading:

Ermita-Malate Hotel and Motel Operators Association v. City of Manila, 20 SCRA 849

Rubi v. Prov. Board of Mindoro, 39 Phil. 660

Nebbia v. State of New York, 291 U.S. 502

Tumey v. Ohio, 273 U.S. 510

Ichong v. Hernandez, 101 Phil. 1155

Reyes v. Court of Appeals, 80 SCRA 114

Javier v. Commission on Elections, 144 SCRA 194

Tañada v. Tuvera, 146 SCRA 446

NASECORE v. Energy Regulatory Commission and Meralco, 481 SCRA 480

Chapter 9

EQUAL PROTECTION

EQUAL PROTECTION of the laws is embraced in the concept of due process, as every unfair discrimination offends the requirements of justice and fair play. It has nonetheless been embodied in a separate clause in Article III, Section 1, of the Constitution to provide for a more specific guaranty against any form of undue favoritism or hostility from the government. Arbitrariness in general may be challenged on the basis of the due process clause. But if the particular act assailed partakes of an unwarranted partiality or prejudice, the sharper weapon to cut it down is the equal protection clause.

Like the due process clause, the equal protection clause is also couched in indefinite language. This is because the guaranty is also dynamic. The purpose of the intentional ambiguity is the same as in due process, *viz.*, to provide for more adjustability to the "swiftly moving facts" of our changing society. It is recalled that in the case of *Plessy v. Ferguson*,[1] the clause was interpreted as justifying the doctrine of separate but equal rights, which meant that the separate enjoyment of rights by white and black persons could be required as long as the rights themselves were equal. But times have changed since that decision was announced by the U.S. Supreme Court in 1894. In 1952, in *Brown v. Board of Education of Topeka*,[2] the doctrine was abandoned with the new ruling that the compulsory separation of the two races in public schools was unconstitutional. Segregation thus yielded to integration in the light of significant societal developments notwithstanding that not a single alteration had been made in the wording of the equal protection clause.

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[1] 163 U.S. 537.
[2] 349 U.S. 294.

Definition

It has been previously remarked that the courts, taking advantage of the vague language of the due process clause, have declined to give it a categorical and constricting interpretation. However, they have not seen fit to insure similar judicial elbow room, as it were, in the case of the equal protection clause. The meaning of this rule is now well-settled, in fact, if consistent judicial reiteration is any indication of stability.

According to a long line of decisions, equal protection simply requires that all persons or things similarly situated should be treated alike, both as to rights conferred and responsibilities imposed.[3] Similar subjects, in other words, should not be treated differently, so as to give undue favor to some and unjustly discriminate against others.

But substantive equality is not enough. It is also required that the law be enforced and applied equally. As held by the U.S. Supreme Court, even if the law be fair and impartial on its face, it will still violate equal protection if it is administered "with an evil eye and an uneven hand," so as to unjustly benefit some and prejudice others.

Thus, in *Yick Wo v. Hopkins*,[4] an ordinance authorizing the board of supervisors to license the establishment of laundries in an American city was annulled by the U.S.

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[3] Ichong v. Hernandez, *supra*.

[4] 118 U.S. 356.

Supreme Court after finding that all Chinese applicants for such license had been systematically rejected whereas all other applications but one had been approved.

In *People v. Vera,*[5] the old Probation Law provided that the probation system shall be applicable "only in those provinces in which the respective provincial boards have provided for the salary of a probation officer." Our Supreme Court held:

> In the case at bar, however, the resultant inequality may be said to flow from the unwarranted delegation of legislative power, although perhaps this is not necessarily the result in every case. Adopting the example given by one of the counsel for the petitioners in the course of his oral argument, one province may appropriate the necessary fund to defray the salary of a probation officer, while another province may refuse or fail to do so. In such a case, the Probation Act would be in operation in the former province but not in the latter. This means that a person otherwise coming within the purview of the law would be able to enjoy the benefits of probation in one province while another person similarly situated in another province would be denied those same benefits. This is obnoxious discrimination. Contrariwise, it is also possible for all the provincial boards to appropriate the necessary funds for the salaries of the probation officers in their respective provinces, in which case no inequality would result for the obvious reason that probation would be in operation in each and every province by the affirmative action of appropriation by all the provincial boards. On that hypothesis, every person coming within the purview of the Probation Act would be entitled to avail of the benefits of the Act. Neither will there be any resulting inequality if no province, through its provincial board, should appropriate any amount for the salary of the probation officer—which is the situation now—and, also, if we accept the contention that, for the purposes of the Probation Act, the City of Manila should be considered as a province and that the municipal board of said city has not made any appropriation for the salary of a probation officer. These different situations suggested show, indeed, that while inequality may result in the application of the law and in the conferment of the

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[5] 65 Phil. 56.

> benefits therein provided, inequality is not in all cases the necessary result. But whatever may be the case, it is clear that Section 11 of the Probation Act creates a situation in which discrimination and inequality are permitted or allowed. There are, to be sure, abundant authorities requiring actual denial of the equal protection of the law before courts should assume the task of setting aside a law vulnerable on that score, but premises and circumstances considered, We are of the opinion that Section 11 of Act No. 4221 permits of the denial of the equal protection of the law and is on that account bad. We see no difference between a law which denies equal protection and a law which permits of such denial. A law may appear to be fair on its face and impartial in appearance, yet, if it permits of unjust and illegal discrimination, it is within the constitutional prohibition.

It was also declared in this case that "this basic individual right sheltered by the Constitution is a restraint on all the three grand departments of the government and on the subordinate instrumentalities and subdivisions thereof, and on many constitutional powers, like the police power, taxation, and eminent domain."

Persons Protected

The equal protection clause is available to all persons, natural as well as juridical. Artificial persons, however, are entitled to the protection only insofar as their property is concerned.[6]

By constitutional reservation, certain rights are enjoyable only by citizens, such as the rights to vote, hold public office, exploit natural resources,[6a] and operate public utilities, although aliens are comprehended in the guaranty. Even ordinary statutes can validly distinguish between citizens and aliens or, for that matter, even between or among citizens only.

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[6] Smith, Bell v. Natividad, 40 Phil. 136.

[6a] But see Art. XIV, Sec. 15, Constitution.

Classification

The equal protection clause does not require the universal application of the laws, that is, that it operate on all the people without distinction. Such an effect might in fact sometimes result in unequal protection. For example, a law prohibiting mature books to all persons, regardless of age, would benefit the morals of the youth but violate the liberty of adults. Another example would be a law requiring military service of all citizens which, while valid as to the able-bodied, would be oppressive to those unable to bear arms, like the sick and the old.

Equally situated

The law, in other words, is not required to provide for equality among all persons if they are not similarly situated. What the Constitution requires is equality among equals.

Accordingly, the legislature is allowed to classify the subjects of legislation. If the classification is reasonable, the law may operate only on some and not all of the people without violating the equal protection clause.

Classification has been defined as the grouping of persons or things similar to each other in certain particulars and different from all others in these same particulars.[7] For example, all women belong in one category because they have the capacity to reproduce, in which respect they are different from men. Minors are similar to each other in that they are all below 18 years of age, and it is in this particular that they differ from adults. Light cars form one group because they are similar to each other in weight, and it is this common characteristic that distinguishes them from other vehicles, which are either bantam or heavy. Citizens owe the same allegiance to their State and so constitute a class separate from aliens, who are not subjected to the same obligation.

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[7] International Harvester Co. v. Missouri, 234 U.S. 199.

(1) Requirements

But it is not enough that the members of a group have the characteristics that distinguish them from others. The classification must, as an indispensable requisite, not be arbitrary. And this classification, to be reasonable, must conform to the following requirements:

(1) It must be based upon substantial distinctions.

(2) It must be germane to the purposes of the law.

(3) It must not be limited to existing conditions only.

(4) It must apply equally to all members of the class.[8]

A. Substantial Distinctions

Superficial differences do not make for a valid classification. The distinction, to be valid, must be substantial. As a general statement only, the law cannot validly distinguish on the basis of the attire of women, or the color of vehicles, or the source of native products, or the emotions of persons, or the texture of their complexion, or the shape of their eyes, or the length of their hair. Fortunately for the greater number, discrimination against the ugly in favor of the beautiful is usually also not allowed.

But certain physical differences of persons can in some instances be the basis of a valid classification. Thus, women, being weaker, may be treated more tenderly by the law than men in specifying working conditions; height and weight are allowable criteria for purposes of certain public employments, as in the police force; health may be considered in the curtailment of some rights, as where lepers are segregated from the rest of the community; age may be a factor in the imposition of public duties such as military service.

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[8] People v. Cayat, 68 Phil. 12.

A recognized distinction between citizens and aliens is that the former have more solicitude for the national interest than the latter, whose allegiance to the local state is merely transient. Minors, who are less experienced than adults, are considered more prone to imposition and temptation and therefore entitled to greater protection. Since they render essential services, public utilities may be granted more powers than ordinary private corporations, even as ceiling prices may be fixed for prime or staple commodities but not for luxury items, which do not affect the public in general. Hotels may be classified and authorized to prescribe different rates according to the differences in the facilities and services they offer. Policemen and firemen may be given better retirement privileges than other public functionaries because of the higher risks they have to take in the discharge of their duties.

In *Ceniza v. Commission on Elections*,[8a] the petitioner contended that a law classifying cities as highly urbanized if they had an annual revenue of P40 million and all others as component cities (except Baguio City) was violative of the equal protection clause. The Supreme Court disagreed, holding as follows:

> The classification of cities into highly urbanized cities and component cities on the basis of their regular annual income is based upon substantial distinction. The revenue of a city would show whether or not it is capable of existence and development as a relatively independent social, economic, and political unit. It would also show whether the city has sufficient economic or industrial activity as to warrant its independence from the province

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[8a] 96 SCRA 763.

> where it is geographically situated. Cities with smaller income need the continued support of the provincial government, thus justifying the continued participation of the voters in the election of provincial officials in some instances.
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> The petitioners also contend that the voters in Mandaue City are denied equal protection of the law since the voters in other component cities are allowed to vote for provincial officials. The contention is without merit. The practice of allowing voters in one component city or vote for provincial officials and denying the same privilege to voters in another component city is a matter of legislative discretion which violates neither the Constitution nor the voter's right of suffrage. x x x It would have been discriminatory and a denial of the equal protection of the law if the statute prohibited an individual or group of voters in the city from voting for provincial officials while granting it to another individual or group of voters in the same city.

In *Nuñez v. Sandiganbayan,*[8b] the Supreme Court held that PD 1606 did not discriminate against persons convicted by the Sandiganbayan in giving them only the remedy of *certiorari* with the Supreme Court as distinguished from those convicted by other trial courts, who could appeal to the Intermediate Appellate Court and even the Supreme Court and so would have more prospects of reversal of the decision against them. Trial in the Sandiganbayan is conducted by the three justices constituting each division, and their unanimous vote is needed for a decision, which conceivably will be more carefully reached than that of the other trial courts.

In *Philippine Association of Service Exporters v. Drilon,*[8c] it was held that Filipino female domestics working abroad were in a class by themselves distinguishable from other Filipino female workers, and more so from Filipino overseas contract workers in general, because of the special risks to which their class was exposed owing to the nature and conditions of their employment. Official reports showed that a number of them had been abused and maltreated by their foreign employers and they had found themselves without recourse.

[8b] 111 SCRA 433.

[8c] 163 SCRA 386 (1988).

In *International School Alliance of Educators v. Quisumbing*,[8d] the local-hire faculty members of the International School, mostly Filipinos, complained against the better treatment of their colleagues who have been hired abroad. These foreign-hires enjoy certain benefits not accorded the local-hires, among them housing, transportation, shipping costs, taxes, home leave travel allowance, and a salary rate 25% higher than that of the local-hires. The reason given by the School was twofold, to wit, the "dislocation factor" and the limited tenure of the foreign-hires. After reviewing various constitutional, statutory, and international provisions for the protection of labor, the Supreme Court, through Justice Santiago M. Kapunan, declared in part:

> The foregoing provisions impregnably institutionalize in this jurisdiction the long-honored legal truism of "equal pay for equal work." Persons who work with substantially equal qualifications, skill, effort and responsibility, under similar conditions, should be paid similar salaries. The rule applies to the School, its "international character" notwithstanding.
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> The School contends that petitioner has not adduced evidence that local-hires perform work equal to that of foreign-hires. The Court finds the argument a little cavalier. If an employee accords employees the same position and rank, the presumption is that these employees perform equal work. The presumption is borne by logic and human experience. If the employer pays one employee less than the rest, it is not for that employee to explain why he receives less or why the others receive more. That would be adding insult to injury. The employer has discriminated against that employee; it is for the employer to explain why the employee is treated unfairly.

[8d] 333 SCRA 13 (2000).

> The employer in this case has failed to discharge this burden.

In the *DECS Case*,[8e] the Supreme Court rejected the contention that the three-flunk rule violated equal protection and held as follows:

> A substantial distinction exists between medical students and other students who are not subjected to the NMAT and the three-flunk rule. The medical profession directly affects the very lives of the people, unlike other careers which, for this reason, do not require more vigilant regulation. The accountant, for example, while belonging to an equally respectable profession, does not hold the same delicate responsibility as that of the physician and so need not be similarly treated.

But when, in *Philippine Judges Association v. Prado*,[8f] the law creating the Philippine Postal Corporation, while retaining the franking privilege for the Office of the President and Congress, withdrew it from the Judiciary, the Supreme Court declared:

> In lumping the Judiciary with the other offices from which the franking privilege has been withdrawn, Section 35 has placed the courts of justice in a category to which it does not belong. If it recognizes the need of the President of the Philippines and the members of Congress for the franking privilege, there is no reason why it should not recognize a similar and in fact greater need on the part of the Judiciary for such privilege.

In *Tatad v. Secretary of Energy*,[8g] the Supreme Court declared as unconstitutional the law deregulating the oil industry on the ground *inter alia* that it discriminated against the "new players," as it called them, insofar as it placed them at a competitive disadvantage *vis-a-vis* the established oil companies by requiring them to meet certain conditions already being observed by the latter.

[8e] *Supra.*
[8f] 227 SCRA 703.
[8g] 281 SCRA 330 (1997).

B. Relevance to Purpose of Law

The classification, even if based on substantial distinctions, will still be invalid if it is not germane to the purpose of the law. To illustrate, the accepted difference in physical stamina between men and women will justify the prohibition of the latter from employment as miners or stevedores or in other heavy or strenuous work. On the basis of this same classification, however, the law cannot provide for a lower passing average for women in the bar examinations because physical strength is not the test for admission to the legal profession. Imported cars may be taxed at a higher rate than locally assembled automobiles for the protection of the national economy, but their difference in origin is no justification for treating them differently when it comes to punishing violations of traffic regulations. The source of the vehicle has no relation to the observance of these rules.

C. Duration

By the third requirement is meant that the classification must be enforced not only for the present but as long as the problem sought to be corrected continues to exist. In *People v. Cayat*,[9] for example, the law prohibited members of the non-Christian tribes from drinking foreign liquor, on the ground that their low degree of culture and their unfamiliarity with this kind of drink rendered them more susceptible to its effects as compared to their more civilized countrymen who were less affected by it. The Supreme Court sustained the classification as it was intended to apply as long as the difference between the two groups continued to exist.

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[9] *Supra.*

In *Ormoc Sugar Co., Inc. v. Treasurer of Ormoc City*,[10] the municipal board of Ormoc City passed an ordinance imposing "on any and all productions of centrifugal sugar milled at the Ormoc Sugar Co., Inc., in Ormoc City a municipal tax equivalent to one per centum (1%) per export sale to the United States of America and other foreign countries." The Supreme Court sustained the challenge to its constitutionality, holding that the questioned ordinance—

> taxes only centrifugal sugar produced and exported by the Ormoc Sugar Company, Inc. and none other. At the time of the taxing ordinance's enactment, Ormoc Sugar Company, Inc., it is true, was the only sugar central in the city of Ormoc. Still, the classification, to be reasonable, should be in terms applicable to future conditions as well. The taxing ordinance should not be singular and exclusive as to exclude any subsequent established sugar central, of the same class as plaintiff, for the coverage of the tax. As it is now, even if later a similar company is set up, it cannot be subject to the tax because the ordinance expressly points only to Ormoc City Sugar Company, Inc. as the entity to be levied upon.

D. Applicability to All

The classification will be regarded as invalid if all the members of the class are not similarly treated, both as to rights conferred and obligations imposed. It is not necessary that the classification be made with absolute symmetry, in the sense that the members of the class should possess the same characteristics in equal degree. Substantial similarity will suffice; and as long as this is achieved, all those covered by the classification are to be treated equally. The mere fact that an individual belonging to a class differs from the other members, as long as that class is substantially distinguishable from all others, does not justify the non-application of the law to him.

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[10] 22 SCRA 603.

Thus, a sterile woman would still be entitled to the benefits of a law protecting the reproductive functions of her sex, such as one prohibiting women from work requiring them to be continuously on their feet. Her inability to bear children does not make her any less a woman. An alien cannot claim the right to operate a retail store even if he can prove that, unlike other foreigners, he is as devoted to the national interest as the citizen because he was born here and has completely embraced the Filipino way of life. By contrast, a Filipino citizen born and raised abroad is entitled to engage in this same business even if it is demonstrable that he is a stranger in his own land and is less concerned with its welfare than the barred foreigner. The simple fact is that the former is a citizen and the latter is not.

In the *Ichong Case,*[11] the Supreme Court, in rejecting the argument that the Retail Trade Nationalization Act violated the equal protection clause, declared as follows:

> The next question that now poses solution is, Does the law deny the equal protection of the laws? As pointed out above, the mere fact of alienage is the root and cause of the distinction between the alien and the national as a trader. The alien resident owes allegiance to the country of his birth or his country; his stay here is for personal convenience; he is attracted by the lure of gain and profit. His aim or purpose of stay, we admit, is neither illegitimate nor immoral, but he is naturally lacking in the spirit of loyalty and enthusiasm for this country where he temporarily stays and makes his living, or of that spirit of regard, sympathy and consideration for his Filipino customers as would prevent him from taking advan-

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[11] *Supra.*

> tage of their weakness and exploiting them. The faster he makes his pile, the earlier can the alien go back to his beloved country and his beloved kin and countrymen. The experience of the country is that the alien retailer has shown such utter disregard for his customers and the people on whom he makes his profit, that it has found it necessary to adopt the legislation, radical as it may seem.
>
> Another objection to the alien retailer in this country is that he never really makes a genuine contribution to national income and wealth. He undoubtedly contributes to general distribution, but the gains and profits he makes are not invested in industries that would help the country's economy and increase national wealth. The alien's interest in this country being merely transient and temporary, it would indeed be ill-advised to continue entrusting the very important function of retail distribution to his hands.
>
> The practices resorted to by aliens in the control of distribution, as already pointed out above, their secret manipulations of stocks of commodities and prices, their utter disregard of the welfare of their customers and of the ultimate happiness of the people of the nation of which they are mere guests, which practices, manipulations and disregard do not attend the exercise of the trade by the nationals, show the existence of real and actual, positive and fundamental differences between an alien and a national which fully justify the legislative classification adopted in the retail trade measure. These differences are certainly a valid reason for the State to prefer the national over the alien in the retail trade. We would be doing violence to fact and reality were we to hold that no reason or ground for a legitimate distinction can be found between one and the other.

In the *Hiu Chiong Case,*[12] the challenged ordinance imposed a work permit fee of P50.00 upon all aliens desirous of obtaining employment in the City of Manila. The Supreme Court annulled the measure, holding through Justice Ramon Fernandez that—

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[12] 86 SCRA 270.

> The P50.00 fee is unreasonable not only because it is excessive but because it fails to consider valid substantial differences in situation among individual aliens who are required to pay it. Although the equal protection clause of the Constitution does not forbid classification, it is imperative that the classification should be based on real and substantial differences having a reasonable relation to the subject of the particular legislation. The same amount of P50.00 is being collected from every employed alien, whether he is casual or permanent, part-time or full-time or whether he is a lowly employee or a highly paid executive.

In the *Deregulation Cases*,[13] the Supreme Court struck down a law deregulating the downstream oil industry for violation of the equal protection clause. According to Justice Puno, the law was unconstitutional because it favored the oligopoly of Petron, Shell and Caltex to the prejudice of prospective investors in the oil industry that would be saddled with requirements already complied with by the three oil giants. As he put it:

> Petron, Shell and Caltex stand as the only major league players in the oil industry. All other players belong to the Lilliputian league. As the dominant players, Petron, Shell and Caltex boast of existing oil refineries of various capacities. The tariff differential of 4% therefore works to their immense benefit. Yet, this is only one edge of the tariff differential. The other edge cuts and cuts deeply to the hearts of their competitors. It erects a high barrier to the entry of new players.
>
> New players that intend to equalize the market powers of Petron, Shell and Caltex by building refineries will have to spend billions of pesos. Those who will not build refineries but compete with them will suffer the huge disadvantage of increasing their product cost by 4%. They will be competing on an uneven field.

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[13] Tatad v. Secretary of Energy and Secretary of Finance, 281 SCRA 330.

Suggested Reading:

Brown v. Board of Education of Topeka, 349 U.S. 294

Yick Wo v. Hopkins, 118 U.S. 356

People v. Vera, 65 Phil. 56

People v. Cayat, 60 Phil. 12

Villegas v. Hiu Chiong, 86 SCRA 270

Philippine Judges Association v. Prado, 227 SCRA 703

Chapter 10

SEARCHES AND SEIZURES

British origins

THE SANCTITY of a person's house is a time-honored hallmark of all free societies. Even in the days of extraordinary royal perquisities, the lowly peasant could proudly proclaim that his humble abode was his castle, from which he could exclude even the mightly monarch. "It may be frail; its roof may shake; the rain may enter; the wind may enter. But the King of England may not enter; all his forces dare not cross the threshold of the ruined tenement."[1] As Cooley remarked, "Awe surrounded and majesty clothed the King, but the humblest subject might shut the door of his cottage against him and defend from intrusion that privacy which was as sacred as the kingly prerogatives."[2]

To this day, the ordinary citizen enjoys the right against official intrusion and is master of all the surveys within the domain and privacy of his own home.

Thus, in Article III, Section 2, of the Constitution, it is provided:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the

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[1] U.S. v. Arceo, 3 Phil. 381; attributed to William Pitt.

[2] Constitutional Limitations.

> witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

Additionally, Section 3(1) of the same article declares:

> The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety or order requires otherwise as prescribed by law.

To bolster these rules, Article III, Section 3(2) also provides:

> Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.

Scope of Protection

The rights against unreasonable searches and seizures and to the privacy of communication and correspondence are available to all persons, including aliens, whether accused of crime or not.[3] Artificial persons, like corporations, are also entitled to the guaranty,[4] although they may be required to open their books of accounts for examination by the State in the exercise of the police power or the power of taxation. As a rule, however, their premises may not be searched nor may their papers and effects seized except by virtue of a valid warrant.

The right against unreasonable searches and seizures is personal and may be invoked only by the person entitled to it. Therefore, one who is not the owner or lessee of the premises searched, or who is not an officer of a corporation whose papers are seized, cannot challenge the validity of the search or seizure.[5]

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[3] Moncado v. People's Court, 80 Phil. 1; Silahis v. Solate, 482 SCRA 660.

[4] Stonehill v. Diokno, 20 SCRA 383.

[5] *Ibid.*

The "right to be left alone" extends not only to the privacy of one's home but also to his office or business establishment, including the papers and effects that may be found there. In one case, it was held to be available to a person in the seclusion of a glass-paneled telephone booth.[6] "Even a guest may expect the shelter of the rooftree he is under," said Justice Frankfurter, "against criminal intrusion."[7]

In *Alih v. Castro,*[7a] the Supreme Court made the following pointed observations:

> The respondents cannot even plead the urgency of the raid because it was in fact not urgent. They knew where the petitioners were. They had every opportunity to get a search warrant before making the raid. If they were worried that the weapons inside the compound would be spirited away, they could have surrounded the premises in the meantime, as a preventive measure. There was absolutely no reason at all why they should disregard the orderly processes required by the Constitution and instead insist on arbitrarily forcing their way into the petitioner's premises with all the menace of a military invasion.
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> x x x
>
> When the respondents could have easily obtained a search warrant from any of the TEN civil courts open and functioning in Zamboanga City, they instead simply barged into the beleaguered premises on the verbal order of their superior officers. One cannot just force his way into any man's house on the illegal orders of a superior, however lofty his rank. Indeed, even the humblest hovel is protected from official intrusion because of the ancient rule, revered in all free regimes, that a man's house is his castle.

Requisites of a Valid Warrant

The constitutional requirements of a valid search warrant or warrant of arrest are the following:

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[6] Katz v. U.S., 389 U.S. 347.

[7] MacDonald v. U.S., 335 U.S. 461.

[7a] 151 SCRA 279.

(1) It must be based upon probable cause.

(2) The probable cause must be determined personally by the judge.

(3) The determination must be made after examination under oath or affirmation of the complainant and the witnesses he may produce.

(4) It must particularly describe the place to be searched and the persons or things to be seized.

(1) Existence of Probable Cause

Probable cause has been defined as referring to "such facts and circumstances antecedent to the issuance of the warrant that in themselves are sufficient to induce a cautious man to rely on them and act in pursuance thereof."[8] It "consists of a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man in believing accused to be committing the offense or to be guilty of the offense."[9] According to another case, "probable cause is the knowledge of facts, actual or apparent, strong enough to justify a reasonable man in the belief that he has lawful grounds for prosecuting defendant in the manner complained of, the concurrence of facts and circumstances reasonably warranting the belief."[10] In *Burgos v. Chief of Staff,*[11] Justice Escolin spoke of probable cause for a search as "such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched."

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[8] People v. Sy Juco, 64 Phil. 667; Alvarez v. CFI, 64 Phil. 33.

[9] Kwong How v. U.S., 71 F. 2d 71, State ex rel Wong.

[10] You v. District Court, 78 P. 2d 353.

[11] 133 SCRA 800.

Corollary to the requirement of probable cause is the rule that the warrant must refer to only one specific offense, as expressly provided in Rule 126, Section 3, of the Rules of Court.

Thus, in *Stonehill v. Diokno*,[12] the Supreme Court, noting that the warrants "were issued upon applications alleging a violation of Central Bank circulars, the Tariff and Customs Law, the Internal Revenue Code and the Revised Penal Code," declared through Chief Justice Conception:

Fishing expedition

> In other words, no *specific* offense had been alleged in said applications. The averments thereof with respect to the offense committed were *abstract.* As a consequence, it was *impossible* for the judges who issued the warrants to have found the existence of probable cause, for the same presupposes the introduction of competent proof that the party against whom it is sought has *performed particular* acts, or committed *specific* omissions, violating a given provision of our criminal laws.

In *Asian Surety & Insurance Co., Inc. v. Herrera*,[13] the search warrant was annulled because it had been issued for four separate and distinct offenses, *viz.*, estafa, falsification, tax evasion and insurance fraud, and in *Castro v. Pabalan*,[14] because it did not refer to one particular offense but to "an illegal traffic in narcotics and contraband." A similar ruling was made in *People v. Court of Appeals*,[14a] where the warrant was described as "a scatter-shot warrant" that could refer to "robbery, theft, qualified theft or estafa."

In *Pita v. Court of Appeals*,[14b] the Supreme Court, after making an extensive exposition of the interpretation of the word "obscenity," declared through Justice Sarmiento that copies of a magazine entitled *Pinoy Playboy* could not be summarily confiscated in line with an anti-smut campaign of the City of Manila. A search warrant must have first been issued after the judge shall have been convinced of the existence of probable cause that the materials sought to be seized were indeed obscene.

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[12] *Supra.*

[13] 54 SCRA 312.

[14] 70 SCRA 477.

[14a] 216 SCRA 101.

[14b] 178 SCRA 362.

(2) Determination of Probable Cause

Determination of probable cause is to be made *"personally by the judge."*

According to *Collector of Customs v. Villaluz*,[15] this power is derived by the judge directly from the self-executing provisions of Article III, Section 2, of the Constitution and therefore may not be limited, much less withdrawn, by the legislature. The word "judge" is interpreted in the generic sense and includes judges of all levels.

The case of *Placer v. Villanueva*,[16] is especially significant because it puts to rest (let us hope) the indecisions of the Supreme Court on the question of who should determine probable cause as a requirement for the issuance of a warrant of arrest. The decision in the early case of *Amarga v. Abbas*,[17] upheld the competence of the prosecutor in this regard but in the *Villaluz Case* there was the suggestion that this ruling might not be tenable. Still later, in *People v. Villanueva*,[18] it was held that the trial court should generally rely on the findings of the prosecutor as another preliminary investigation conducted by it would be "time-wasting."

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[15] 71 SCRA 356.

[16] 126 SCRA 463.

[17] 98 Phil. 739.

[18] 110 SCRA 465.

In *Placer*, several informations were filed by the petitioning prosecutors who had certified that they had conducted the required preliminary investigations. The judge asked them to submit the supporting affidavits so he could determine whether or not the corresponding warrants of arrest should be issued, but the prosecutors refused, arguing they had the authority under PD 911 to determine probable cause. The Supreme Court disagreed, ruling that the issuance of the warrant of arrest was not a ministerial function of the judge who had the right to determine for himself the existence of probable cause. While he could rely on the findings of the prosecutor, he was nevertheless not bound thereby. The Court cited Rule 112, Section 6 of the Rules of Court, providing that a judge may issue a warrant of arrest only if he is satisfied from the investigation conducted by him or the prosecutor that there is probable cause.[18a]

In *Soliven v. Makasiar*,[18b] it was held:

> The addition of the word 'personally' after the word 'determined' and the deletion of the grant of authority by the 1973 Constitution to issue warrants to 'other responsible officers as may be authorized by law' does not necessarily mean that the Constitution now requires the judge to personally examine the complainant and his witnesses in his determination of probable cause of the issuance of the warrants.
>
> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses.
>
> Following established doctrine and procedure, he shall (1) personally evaluate the report and the supporting documents

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[18a] But see Tolentino v. Villaluz, 152 SCRA 299 (1987).

[18b] 167 SCRA 393.

> submitted by the fiscal regarding the existence of probable cause and on the basis thereof, issue a warrant of arrest, or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.
>
> Sound policy dictates this procedure, otherwise judges would be unduly laden with the investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.

These rules were reiterated in *Enrile v. Salazar,*[18c] thus:

> It is also contended that the respondent Judge issued the warrant for the petitioner's arrest without first *personally* determining the existence of probable cause by examining under oath or affirmation the complainant and his witnesses, in violation of Art. III, Sec. 2, of the Constitution. This Court has already ruled, however, that it is not the unavoidable duty of the judge to make such a personal examination, it being sufficient that he follows established procedure by *personally* evaluating the report and the supporting documents submitted by the prosecutor.

In *Ho v. People,*[18d] the Supreme Court distinguished between the objectives of the prosecutor and the judge in determining the existence of probable cause. The prosecutor determines whether there is reasonable ground to believe that the accused is guilty and should be held for trial. On the other hand, the judge determines if a warrant of arrest should be issued to place the accused in immediate custody so as not to frustrate the ends of justice. In resolving the second question, the judge should not rely on the recommendations alone of the prosecutor but must independently arrive at his own conclusions based not only on the bare report of the prosecutor but also on other relevant documents.

[18c] 186 SCRA 217.

[18d] 280 SCRA 365; see also Roberts v. Court of Appeals, 254 SCRA 307.

Warrants of arrest may be issued by administrative authorities only for the purpose of carrying out a final finding of a violation of law, like an order of deportation or an order of contempt, and not for the sole purpose of investigation or prosecution.[18e] As held in *Morano v. Vivo,*[19]

> The constitutional limitation contemplates an order of arrest in the exercise of judicial power as a step preliminary or incidental to prosecution or proceedings for a given offense or administrative action, not as a measure indispensable to carry out a valid decision by a competent official, such as a legal order of deportation, issued by the Commission of Immigration, in pursuance of a valid legislation.

It has also been held that the requirement of probable cause is, strictly speaking, not applicable in deportation proceedings, which are not criminal in nature. The order of deportation is purely administrative, its purpose being not punishment but the return to his country of the alien who has violated the conditions for his admission to the local state.[19a]

In *Salazar v. Achacoso,*[19b] the public respondent issued a closure and seizure order against the petitioner for alleged illegal recruitment of laborers for overseas employment. The basis of the order was a presidential decree, later embodied in Article 38 of the Labor Code, empowering the Secretary of Labor or his duly authorized representative "to cause the arrest and detention" and "order the search" of the office and "the seizure of documents, paraphernalia, properties and other implements" of any unlicensed recruiter for overseas employment. The Supreme Court, through Justice Sarmiento, declared:

[18e] Board of Commissioners v. De la Rosa, 197 SCRA 853.

[19] 20 SCRA 562. See also Gatchalian v. Board of Commissioners, 197 SCRA 854.

[19a] Harvey v. Santiago, 162 SCRA 840.

[19b] 183 SCRA 145.

> The decrees in question, it is well to note, stand as the dying vestiges of authoritarian rule in its twilight moments.
>
> We reiterate that the Secretary of Labor, not being a judge, may no longer issue search or arrest warrants. Hence, the authorities must go through the judicial process. To that extent, we declare Article 38, paragraphs (c), of the Labor Code, unconstitutional and of no force and effect.
>
> The Solicitor General's reliance on the case of Morano v. Vivo is not well-taken. Vivo involved a deportation case, governed by Section 69 of the defunct Revised Administrative Code and by Section 37 of the Immigration Law. We have ruled that in deportation cases, an arrest (of an undesirable alien) ordered by the President or his duly authorized representatives, in order to carry out a final decision of deportation is valid.

(3) Examination of Applicant

According to Rule 126, Section 4, of the Rules of Court, the judge, before issuing the search warrant, must "personally examine in the form of searching questions and answers, in writing and under oath the complainant and any witnesses he may produce on facts personally known to them, and attach to the record their sworn statements together with any affidavits submitted." The same requirements are to be observed in the preliminary examination to be conducted for the issuance of a warrant of arrest.

The evidence offered by the complainant and his witnesses should be based on their own personal knowledge and not on mere information or belief. Hearsay is not allowed. The affidavits, to be considered sufficient, should be drawn in such a manner that the affiant could be charged with perjury if the allegations contained therein are found to be untrue.

Thus, in *Alvarez v. Court of First Instance,*[20] the Supreme Court annulled a search warrant issued on the strength of an affidavit based on "reliable information" which, according to the affiant, was "correct to the best of his knowledge and belief." It was noted that "he did not swear to the truth of his statements upon his own knowledge of the facts but upon the information received by him from a reliable person."

In the *Burgos Case,*[20a] the Supreme Court rejected the application for search warrants filed by two military officers on the basis of "the evidence gathered and collated by our unit," stressing that "the Constitution requires no less than personal knowledge by the complainant or his witnesses of the facts upon which the issuance of a search warrant may be justified."

By contrast, the search warrant was sustained in *Yee Sue Koy v. Almeda,*[21] where it was shown that the complainant and his witness, of their own personal knowledge obtained from the personal investigations conducted by them, both declared under oath that the petitioner was engaged in usurious activities.

Compare

In the case of *Mata v. Bayona,*[22] it was held that mere affidavits of the complainant and his witnesses were not enough to sustain the issuance of a search warrant. The judge must take depositions in writing and attach them to the record as these are necessary to enable the court to determine the existence of probable cause.

In *Ponsica v. Ignalaga,*[23] the Court observed through Justice Narvasa that "the affiants' declarations in their sworn statements are generalities, mere conclusions of theirs, not positive statements of particular facts within their personal knowledge," and rejected the finding of probable cause because "there had been no searching interrogation of the witnesses as required by the Constitution."

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[20] 64 Phil. 33.

[20a] *Supra.*

[21] 70 Phil. 141.

[22] 128 SCRA 388.

[23] 152 SCRA 647 (1987).

(4) Particularity of Description

The Constitution requires that the place to be searched or the persons or things to be seized be described with such particularity as to enable the person serving the warrant to identify them. Failure of this requirement may result in erroneous or, worse, arbitrary enforcement of the warrant.

Ideally, the person sought to be seized should be identified by name. If the warrant is issued without a name or with the name in blank such that it can be enforced against any person, it is unquestionably void. Thus, a warrant issued against "John Doe or Richard Roe, whose other or true name is to your complainant unknown" was held insufficient and illegal.[24]

But while a John Doe warrant is generally held invalid, it will satisfy the constitutional requirement if there is some *descriptio personae* that will enable the officer to identify the accused. Accordingly, it was held in *People v. Veloso*,[25] that the warrant was valid although issued against John Doe only where it was shown that he was described as occupying and in control of a building at a specified address.

The description of the premises sought to be searched was in the same case held to be sufficient because it par-

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[24] Commonwealth v. Crotty, 10 Allen (Mass.) 403.

[25] 48 Phil. 169.

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ticularly referred to "the building numbered 124 Calle Arzobispo, City of Manila, Philippine Islands." The prevailing rule, said the Supreme Court, was that "a description of a place to be searched is sufficient if the officer with the warrant can, with reasonable effort, ascertain and identify the place intended."

Where by the nature of the articles to be seized their description must be rather general, it is not required that a technical description be given. In the *Alvarez Case,*[25a] the search and seizure of "books, documents, receipts, lists, chits, and other papers used by him in connection with his activities as money-lender, charging a usurious interest, in violation of law" was held valid on the ground that "no other more adequate and detailed description could have been given."

But in the *Stonehill Case,*[25b] the Supreme Court annulled the warrants against the accused, who had been charged with violation of various laws in general, for the search and seizure of their "financial records, vouchers, journals, correspondence, receipts, ledgers, portfolios, credit journals, typewriters, and other documents and/or papers showing all business transactions, including disbursement receipts, balance sheets and related profit and loss statements." As Chief Justice Concepcion put it:

> Thus, the warrants authorized the search for the seizure of records pertaining to *all business* transactions of petitioners herein, regardless of whether the transactions were *legal* or *illegal.* The warrants sanctioned the seizure of *all* records of the petitioners and the aforementioned corporations, whatever their nature, thus openly contravening the explicit command of our Bill of Rights—that the things to be seized be *particularly* described—as well as tending to defeat its major objective: the elimination of *general* warrants.

[25a] *Supra.*

[25b] *Supra.*

In the *Burgos Case,*[25c] the search warrants were also annulled on the further ground that they were general warrants because the properties sought to be seized were not described with particularity. As the Supreme Court put it:

> And when the search warrant applied for is directed against a newspaper publisher or editor in connection with the publication of subversive materials, as in the case at bar, the application and/or its supporting affidavits must contain a specification, stating with particularity the alleged subversive material he has published or is intending to publish. Mere generalization will not suffice. Thus, the broad statement in Col. Abadilla's application that petitioner is in possession or has in his control printing equipment and other paraphernalia, news publications and other documents which were used and are all continuously being used as a means of committing the offense of subversion punishable under Presidential Decree 885, as amended x x x is a mere conclusion of law and does not satisfy the requirements of probable cause. Bereft of such particulars as would justify a finding of the existence of probable cause, said allegation cannot serve as basis for the issuance of a search warrant and it was a grave error for respondent judge to have done so.

And in *Nolasco v. Paño,*[25d] the Court declared:

> The disputed Search Warrant (No. 80-84) describes the personalties to be seized as follows:
>
> > 'Documents, papers and other records of the Communist Party of the Philippines/New People's Army and/or the National Democratic Front, such as Minutes of the Party Meetings, Plans of these groups, Programs, List of possible supporters, subversive books and instructions, manuals not otherwise available to the public, and support money from foreign or local sources.'

[25c] *Supra.*

[25d] 139 SCRA 152.

> It is at once evident that the foregoing Search Warrant authorizes the seizure of personal properties vaguely described and not particularized. It is an all-embracing description which includes everything conceivable regarding the Communist Party of the Philippines and the National Democratic Front. It does not specify what the subversive books and instructions are; what the manuals otherwise available to the public contain to make them subversive or to enable them to be used for the crime of rebellion. There is absent a definite guideline to the searching team as to what items might be lawfully seized, thus giving the officers of the law discretion regarding what articles they should seize as, in fact, taken also were a portable typewriter and 2 wooden boxes. It is thus in the nature of a general warrant and infringes on the constitutional mandate requiring particular description of the things to be seized. In the recent rulings of this Court, search warrants of similar description were considered null and void for being too general.

A similar ruling was made in *20th Century Fox Film Corporation v. Court of Appeals,*[25e] where the properties sought to be seized were described as "television sets, video casette recorders, rewinders and tape cleaners" without any specific indication that they were being used in violating the Anti-Piracy Law.

In any case, only the articles particularly described in the warrant can be seized, and no other property can be taken thereunder unless it is prohibited by law.

Properties Subject to Seizure

Under Rule 126, Section 2, of the Rules of Court, the following are subject to search and seizure: (1) property subject of the offense; (2) property stolen or embezzled and other proceeds or fruits of the offense; and (3) property used or intended to be used as the means of committing an offense.

[25e] 164 SCRA 655. See also Columbia Pictures, Inc. v. Flores, 223 SCRA 761.

Where the search and seizure is made only for the purpose of obtaining evidence to be used against the accused, the warrant is unlawful as it would violate the constitutional right against self-incrimination. But "search and seizure of a man's private papers to be used in evidence for the purpose of convicting him of a crime, recovering a penalty, or forfeiting his property, is totally different from the search and seizure of stolen goods, dutiable articles on which the duties have not been paid, and the like, which rightfully belong to the custody of the law."[26] The return of those goods, even if illegally seized, may not be ordered by the court.[27]

Admissibility of Illegally Seized Evidence

Articles illegally seized are not admissible as evidence, pursuant to the doctrine originally announced in *Stonehill v. Diokno.* The rule has been constitutionally affirmed in Article III, Section 3(2), which provides that such evidence "*shall be inadmissible for any purpose in any proceeding.*" Such evidence is "the fruit of the poisonous tree."

This reverses the non-exclusionary rule announced in *Moncado v. People's Court*[28] to the effect that evidence illegally seized is still admissible as long as it is not excluded by the Rules of Court, on the theory that the criminal should not be allowed to go free merely because "the constable has blundered."

While conceding that the officer making the unlawful search and seizure may be held criminally and civilly liable, *Stonehill* observed that most jurisdictions have realized that the exclusionary rule is "the only practical means of enforcing the constitutional injunction" against abuse. This approach is based on the justification made by Judge Learned Hand that "only in case the prosecution which itself controls the seizing officials, knows that it *cannot* profit by their wrong, will the wrong be repressed."

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[26] Uy Kheytin v. Villareal, 42 Phil. 886.

[27] People v. Marcos, 117 SCRA 999; Mata v. Bayona, *supra.*

[28] *Supra.*

Chief Justice Concepcion stated further:

> Indeed, the non-exclusionary rule is contrary, not only to the letter, but also, to the spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirement of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is *not possible* for the Judge to find that there is probable cause, and hence, no justification for the issuance of the warrant. The only possible explanation (not justification) for its issuance is the necessity of fishing evidence of the commission of a crime. But, then, this fishing expedition is indicative of the absence of evidence to establish probable cause.

But although the properties may have been seized in violation of the said provision, it does not follow that its owner shall be entitled to recover it immediately. If the said property is the subject of litigation, like a prosecution for illegal possession of firearms, it will remain *in custodia legis* until the case is terminated.[29]

Although Section 3(2) provides that evidence illegally seized *"shall be inadmissible for any purpose in any proceeding"* it is submitted that it may nonetheless be used in the judicial or administrative action that may be filed against the officer responsible for its illegal seizure.

It has also been held that where the accused did not raise the issue of the admissibility of the evidence against him on the ground that it had been illegally seized, such omission constituted a waiver of the protection granted by this section, and the illegally seized evidence could then be admitted against him.[29a] Such objection should be made before arraignment, according to *People v. Zaspa*.[29b]

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[29] Roan v. Gonzales, 145 SCRA 687; Alih v. Castro, 151 SCRA 279.

Warrantless Searches and Seizures

There are instances when a search or seizure may be validly made notwithstanding noncompliance with the requisites discussed above.

It is provided in the Rules of Court, for example, that a peace officer or even a private person may, without a warrant, arrest a person: (1) when such person has in fact just committed, is actually committing, or is attempting to commit an offense in his presence; (2) when an offense has in fact just been committed and he has personal knowledge of facts indicating that the person to be arrested has committed it; (3) when the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.[30]

Reqs

Where an arrest is effected by virtue of a valid warrant, or under any of the above circumstances, a search may be made as an incident to such valid arrest. The individual being arrested may be frisked for concealed weapons that may be used against the arresting officer and all unlawful articles found in his person or within his immediate control may be seized.[31] Rulings to this effect have

Searching immediate area of control

[29a] People v. Exala, 221 SCRA 494.

[29b] 340 SCRA 752.

[30] Rule 113, Sec. 5.

[31] Adams v. Williams, 47 U.S. 143.

been made by the Supreme Court, as in *People v. Figueroa*[31a] and *People v. Salazar.*[31b]

A warrantless search incidental to a lawful arrest may be made only within the permissible area of search, or the place within the immediate control of the person being arrested. Thus, in *Espano v. Court of Appeals,*[31c] marijuana seized under the house of the accused after his arrest on the street was held inadmissible evidence because it was unlawfully obtained.

Limited protective search (US)

Even before an arrest, as held in *Terry v. Ohio,*[32] "when an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is presently dangerous to the officer or to others," he may conduct a limited protective search for concealed weapons. The purpose of this limited search is not to discover evidence of crime but to allow the officer to pursue his investigation without risk of violence.

Express informed waiver

An arrest may also be made without warrant where the right thereto is waived by the person arrested, provided he knew of such right and knowingly decided not to invoke it.[32a] But no waiver is to be presumed where the person merely submits to the arresting officer in manifestation of his respect for authority or where he allows entry into his home as a sign of hospitality and politeness.[33]

Where the implied acquiescence was not more than mere passive conformity given under intimidating or coercive circumstances, no consent to the illegal search or seizure can be implied.[33a]

[31a] 248 SCRA 679.

[31b] 266 SCRA 607.

[31c] 288 SCRA 588.

[32] 392 U.S. 1.

[32a] People v. Tabar, 222 SCRA 144.

[33] Magoncia v. Palacio, 80 Phil. 770.

According to *Callanta v. Villanueva*,[34] posting of bail bond constitutes waiver of any irregularity attending the arrest of a person and estops him from questioning its validity. This doctrine was reiterated in the subsequent case of *Bagcal v. Villaraza*.[35]

Pwedeng abusuhin to ah

It has also been held in a long line of cases that "searches and seizures without warrant of vessels and aircraft for violation of customs laws have been the traditional exception to the constitutional requirement because the vessel can be quickly moved out of the locality or jurisdiction in which the search must be sought before the warrant could be secured."[36]

S&S for vessels

Customs laws

The same rule has been applied to land vehicles, the warrantless search of which has been sustained in several cases, as in *Papa v. Mago*[37] where, acting on an informer's tip, the police intercepted two trucks that had left the customs area, searched and found them to be loaded with undeclared cargo, which they confiscated. Rejecting the owner's demand for its return on the ground that it had been seized without a search warrant, the Supreme Court held that the police had probable cause to make the warrantless search and seizure.

The law-enforcement authorities were also upheld in *People v. Court of First Instance of Rizal*[38] when, acting on an informer's tip received one week earlier, they intercepted an automobile from Clark Field and seized the articles contained therein, which were later sought to be introduced in evidence against the owner and driver of the car in their prosecution for smuggling. The majority of the Court held there was probable cause to justify the absence of a warrant. Justice Teehankee dissented, arguing that there was enough time in this case for the obtention of such warrant.

[33a] People v. Aruta, *288* SCRA 626.

[34] 77 SCRA 377.

[35] 120 SCRA 525.

[36] Roldan v. Arca, 65 SCRA 336.

[37] 22 SCRA 857.

[38] 101 SCRA 86.

In *People v. Que,*[39] Justice Puno found for the Court as follows:

> The police officers in the case at bar had probable cause to search appellant's truck. They received reliable information that a truck with a specified plate number loaded with illegal lumber would pass through Ilocos Norte. When they apprehended the truck, accused-appellant, the owner of the truck and cargo, admitted that there were sawn lumber in between the concrete slabs. When asked for the lumber's supporting documents, accused-appellant could not present any. The foregoing circumstances are sufficient to prove the existence of probable cause which justified the extensive search of appellant's truck even without a warrant. Thus, the pieces of lumber were lawfully seized and were properly admitted as evidence to prove the guilt of accused-appellant.

In *Salvador v. People,*[39a] the Supreme Court agreed with the Solicitor General that—

> . . . there was sufficient probable cause for the PAF surveillance team to stop and search petitioner and his companions. They boarded the parked Air Bus 300 PAL plane at the time when there were no other PAL personnel working therein. They stayed inside the place for some time and surprisingly came out with bulging waists. They then stopped and looked around and made apparent signals. All these acts were sufficient to engender a reasonable suspicion that petitioner and his colleagues were up to something illegal. Moreover, the search and seizure was conducted in connection with the enforcement of customs law when the petitioner and his co-

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[39] 265 SCRA 721.

[39a] 460 SCRA 48.

accused were riding a motor vehicle. In addition, the search was conducted at the vicinity of Lima Gate of the Manila Domestic Airport which, like every gate in the airport perimeter has a checkpoint. Finally, the petitioner and his companions agreed to the search after one of them was caught with a suspicious looking packet. Under these circumstances, the search and seizure is considered legal, and the seized items are admissible in evidence.

In *People v. Malmstedt,*[40] a passenger bus was stopped at a military checkpoint for inspection. One of the soldiers noticed a bulge on the waist of the accused which turned out to be a pouch containing hashish. Further search revealed more harshish concealed in several teddy bears he was carrying in his bag. The accused was placed under arrest and the drugs were confiscated. After his conviction for violation of the Dangerous Drugs Act, he claimed the hashish had been illegally seized and therefore could not be used as evidence against him.

In upholding the trial court, the Supreme Court said in part:

> The receipt of information by NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession, plus the suspicious failure of the accused to produce his passport, taken together as a whole, led the NARCOM officers to reasonably believe that the accused was trying to hide something illegal from the authorities. From these circumstances arose a *probable cause* which justified the warrantless search that was made on the personal effects of the accused. In other words, the acts of the NARCOM officers in requiring the accused to open his pouch bag and in opening one of the wrapped objects found inside said bag (which was discovered to contain hashish) as well as the two (2) travelling bags containing two (2) teddy bears with hashish stuffed inside them, were prompted by accused's own attempt to hide his identity by refusing to present his passport, and by the information received by the NARCOM that a Caucasian coming from Sagada had prohibited drugs in his possession. To deprive

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none of the 3
reqs present

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[40] 198 SCRA 401.

> the NARCOM agents of the ability and facility to act accordingly, including to search even without warrant, in the light of such circumstances, would be to sanction impotence and ineffectiveness in law enforcement, to the detriment of society.

Justice Narvasa, who was joined by four other members, dissented and said:

> Contrary to the conclusion reached by the majority, I believe that the appellant should be absolved on reasonable doubt. There was in this case no confidential report from, or positive identification by an informer; no attempt to flee; no bag or package emitting telltale odors; no other reasonably persuasive indications that Malmstedt was at the time in process of perpetrating the offense for which he was subsequently prosecuted. Hence, when the soldiers searched Malmstedt's pouch and the bags in his possession, they were simply "fishing" for evidence. It matters not that the search disclosed that the bags contained prohibited substances, confirming their initial information and suspicion. The search was not made by virtue of a warrant or as an incident of a lawful warrantless arrest, i.e., under circumstances sufficient to engender a reasonable belief that some crime was being or about to be committed, or had just been committed. There was no intelligent and intentional waiver of the right against unreasonable searches and seizure. The search was, therefore, illegal since the law requires that there first be a lawful arrest of an individual before a search of his body and his belongings may licitly be made. The process cannot be reversed, i.e., a search be first undertaken, and then an arrest effected, on the strength of the evidence yielded by the search. An arrest made in that case would be unlawful, and the search undertaken as an incident of such an unlawful arrest, also unlawful.

Similar observations were made by Chief Justice Hilario G. Davide, Jr., in *People vs. Chua Ho San*,[40a] a recapitulation of the basic rules on searches and seizures, where he repeated the doctrine, so often violated by law-enforcement authorities and even courts, that "there must first be a lawful arrest before a search can be made—the process cannot be reversed."

[40a] 308 SCRA 432.

In *Malacat v. Court of Appeals,*[40b] also penned by Chief Justice Davide, the Court declared that in addition to the cases mentioned in Rule 113, Sec. 5, of the Rules of Court, valid warrantless searches are limited to 1) customs searches; 2) searches of moving vehicles; 3) seizure of evidence in plain view; 4) consent searches; 5) searches incidental to a lawful arrest; and 6) "stop and frisk."

Prohibited articles within plain view, "open to eye and hand," of the law-enforcement officer who comes upon them "inadvertently" may also be seized by him even without warrant.[41]

As to inspection of buildings and other premises for enforcement of fire, sanitary, and building regulations, the applicable decision is *Camara v. Municipal Court,*[42] where the U.S. Supreme Court reversed the conviction of a person who had refused a warrantless entry into his residence by municipal officers who wanted to make a routine annual inspection of premises for possible violations of the San Francisco House Code. The decision held that there was no probable cause to sustain the search and no urgency about it either to justify the inspection without first obtaining a search warrant.

A case that excited much attention (and criticism) was *Valmonte v. De Villa,*[42a] where the Supreme Court upheld the establishment of checkpoints by the military where it could conduct searches and make arrests without warrant. With Justices Cruz and Sarmiento dissenting, the majority believed with Justice Padilla that:

[40b] 283 SCRA 159.

[41] Harris v. U.S., 390 U.S. 234.

[42] 387 U.S. 523.

[42a] 173 SCRA 211.

The setting up of the questioned checkpoints in Valenzuela (and probably in other areas) may be considered as a security measure to enable the NCRDC to pursue its mission of establishing effective territorial defense and maintaining peace and order for the benefit of the public. Checkpoints may also be regarded as measures to thwart plots to destabilize the government, in the interest of public security. In this connection, the Court may take judicial notice of the shift to urban centers and their suburbs of the insurgency movement, so clearly reflected in the increased killings in cities of police and military men by NPA "sparrow units," not to mention the abundance of unlicensed firearms and the alarming rise in lawlessness and violence in such urban centers, not all of which are reported in media, most likely brought about by deteriorating economic conditions—which all sum up to what one can rightly consider, at the very least, as abnormal times. Between the inherent right of the state to protect its existence and promote public welfare and an individual's right against a warrantless search which is however reasonably conducted, the former should prevail.

In his dissent, Justice Cruz said:

The sweeping statements in the majority opinion are as dangerous as the checkpoints it would sustain and fraught with serious threats to individual liberty. The bland declaration that individual rights must yield to the demands of national security ignores the fact that the Bill of Rights was intended precisely to limit the authority of the State even if asserted on the ground of national security. What is worse is that the searches and seizures are peremptorily pronounced to be reasonable even without proof of probable cause and much less the required warrant. The improbable excuse is that they are aimed at "establishing an effective territorial defense, maintaining peace and order, and providing an atmosphere conducive to the social, economic and political development of the National Capital Region." For these purposes, every individual may be stopped and searched at random and at any time simply because he excites the suspicion, caprice, hostility or malice of the officers manning the checkpoints, on pain of arrest or, worse, even being shot to death if he resists.

Continuing offence

In *Umil v. Ramos*,[42b] several petitions for *habeas corpus* were consolidated for a joint decision by the Supreme Court on the common issue of the warrantless arrests and searches of the petitioners. Two of the petitions were dismissed on the ground that the petitioners had posted bail and had already been released. A third petition was also dismissed because the petitioner, as a member of the New People's Army, could be arrested at any time, being engaged in the continuing offense of subversion, according to the doctrine announced in *Garcia-Padilla v. Enrile*.[42c] Another petitioner was found to have already been convicted of murder and was serving his sentence. Two other petitioners allowed their houses to be searched after previously admitting their membership in the NPA, and two others were found in possession of prohibited firearms. In another petition, the warrantless arrest of a person the morning after he delivered an allegedly seditious speech the night before was sustained, as so also was the warrantless arrest of another petitioner who, after 14 days, was identified as one of those involved in a killing.

The decision, to which dissenting opinions were filed by Justices Cruz and Sarmiento, elicited much adverse criticism.

In the much-publicized case of *Prof. Randolf S. David v. Pres. Gloria Macapagal Arroyo*,[42d] the Supreme Court held in the dispositive portion of the lengthy decision:

> The warrant of arrest of Randolf S. David and Ronald Llamas, the dispersal and warrantless arrest of the KMU and NAFKU-KMU members during their rallies in the absence of proof that those petitioners were committing acts of lawless violence, invasion or rebellion, and violating BP 880; the impo-

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[42b] 187 SCRA 311.
[42c] 121 SCRA 472.
[42d] 489 SCRA 160.

sition of standards or any form of prior restraint, as well as the warrantless search of *Tribune* offices and whimsical seizures of its articles for publication, and other materials, are declared UNCONSTITUTIONAL.

Finally, it has been held that an accused is estopped from questioning the legality of his arrest where he never raised it before entering his plea.[42e]

Privacy of Communication and Correspondence

The basic provision on searches and seizures was originally interpreted by the U.S. Supreme Court as applicable only to the unlawful taking of *tangible* objects, over strong dissents from Justices Brandeis and Holmes.[43] The doctrine was four decades later overturned in *Katz v. United States*,[44] but not without equally strong objection from Justice Black, another liberal of the Court.

Fortunately, the controversy has only academic significance in our jurisdiction because of Article III, Section 3(1) of our Constitution providing that "*the privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety or order requires otherwise as prescribed by law.*" This provision, which was taken not from the U.S. Constitution but from our own Malolos Constitution, unquestionably rules out eavesdropping on private conversations through the use of electronic gadgets and thus covers with its protection even *intangible* things.

In implementation of this provision, the Anti-Wire-Tapping Act,[44a] prohibits "any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept or record" the same, or to communicate the content thereof to any other person. The use of these records is permitted only in civil and criminal proceedings involving certain specified offenses, mainly those affecting national security. Moreover, these acts may be done only upon previous written authorization by the court, to be issued upon compliance with the constitutional requirements for the issuance of a warrant, and shall be effective for only sixty days. Any evidence obtained in violation of the law is also not admissible as in any proceeding.

[42e] People v. Salvatierra, 276 SCRA 55.

[43] Olmstead v. U.S., 277 U.S. 438; Goldman v. U.S., 316 U.S. 29.

[44] 389 U.S. 347.

[44a] RA 4200.

In *Gaanan v. Intermediate Appellate Court,*[44b] it was held that a telephone extension was not among the [redacted] covered by this law and that the use of that instrument to listen in on a private conversation was not prohibited as a "tap."

According to the U.S. Supreme Court, letters and sealed packages in the mails may be examined only as to their external appearance and weight and may not be opened except in accordance with the constitutional requirements of a lawful search and seizures.[45]

Suggested Reading:

Stonehill v. Diokno, 20 SCRA 383
Alvarez v. CFI, 64 Phil. 33
Collector of Customs v. Villaluz, 71 SCRA 356
Terry v. Ohio, 392 U.S. 1
Camara v. Municipal Court, 387 U.S. 523

[44b] 145 SCRA 112.
[45] Ex Parte Jackson, 96 U.S. 727.

Burgos v. Chief of Staff, 133 SCRA 800
People v. Burgos, 144 SCRA 1
Roan v. Gonzales, 145 SCRA 687
Alih v. Castro, 151 SCRA 279
People v. Malmstedt, G.R. No. 91107, June 19, 1991
Valmonte v. De Villa, 173 SCRA 211
Umil v. Ramos, 187 SCRA 311
Ople v. Torres, 293 SCRA 141

Chapter 11

LIBERTY OF ABODE AND TRAVEL

THE ISSUE in *Caunca v. Salazar*[1] was whether or not a maid had the right to transfer to another residence even if she had not yet paid the amount advanced by an employment agency, which was then detaining her, for her transportation from the province. The respondent said she could not. The Supreme Court ruled otherwise. In this petition for *habeas corpus,* the petitioner's liberty of abode was sustained and her detention declared unconstitutional. Justice Perfecto declared:

> An employment agency, regardless of the amount it may advance to a prospective employee, has absolutely no power to curtail the freedom of said employee. The fact that power to control said freedom may be an effective means of avoiding monetary loss to the agency is no reason for jeopardizing a fundamental human right. The fortunes of business cannot be controlled by controlling a fundamental human freedom. Human dignity is not a merchandise appropriate for commercial barters or business bargains. Fundamental freedoms are beyond the province of commerce or any other business enterprise.
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> x x x
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> In the scale of values, there is no acceptable equivalence between matters involving human dignity and those belonging to the domain of business. The latter are characterized by transcience and precariousness, while the former are the nearest things to what are everlasting, if ever there are any, in humanity. Human dignity and human freedoms are essentially spiritual notwithstanding their material manifestations in the external world, and the universal concept of the spirit is inseparable

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[1] 82 Phil. 851.

> from the idea of the eternal, of the unlimited by space or time. Money, power, domination, satisfaction of the pleasures of the flesh, like all lusts, belong to the ephemeral and perishable, an order of things which has no possible equation with the moral values of the spirit, among which are human freedom.

The above views have been affirmed in Section 6 of the Bill of Rights providing as follows:

> Sec. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety or public health, as may be provided by law.

This is a rewriting of the original rule in the old Constitution, which was confined to the liberty of abode. The new rule expressly includes the right to travel, and the exceptions have been restricted.

Purpose

The purpose of the guaranty is to further emphasize the individual's liberty as safeguarded in general terms by the due process clause. Liberty under that clause includes the right to choose one's residence, to leave it whenever he pleases, and to travel wherever he wills. Section 6 is a specific safeguard of these rights and is intended to underline their importance in a free society.

In repressive regimes, one may not change his residence at will. The citizen cannot move from one part of the country to another, much less out of the country, without the permission of the authorities. His departure from one locality must be previously cleared, his transfer to another registered, and, if the government so says, he may be shifted from one place to another against his consent. The idea is to keep tight rein on his movements and close track of his activities on the chance that he may be plotting against the State. Always chary of the motives of its subjects, the despotic government keeps an eagle eye on their comings and goings and places them under its close and constant surveillance, the better to control their actions.

Limitations

The liberty of abode and of travel is, however, subject to specific restrictions under the same constitutional provision. According to Section 6, the liberty of abode can be limited "*upon lawful order of the court*" and the right to travel by the requirements of "*national security, public safety or public health as may be provided by law.*"

Thus, a person facing criminal charges may be restrained by the court from leaving the country or, if abroad, compelled to return. A lessee may be judicially ejected for violation of his contractual duties. The judge may prevent a person from entering certain premises under dispute or declared off-limits by the proper authorities.

Though violation of the tenor of lease contract grounds for extra judicially termination

There is no doubt that health officers may restrict access to contaminated areas and also quarantine those already exposed to the disease sought to be contained.[2] Where there is threat of a volcanic eruption, for example, residents in the affected area may be forced to evacuate and prevented from returning until the danger is over. In the United States, it has been held that the Secretary of State may regulate or even prohibit the travel of citizens to hostile countries to prevent possible international misunderstanding and conflict.[3]

In *Rubi v. Provincial Board of Mindoro*,[4] the respondents were justified in requiring the members of certain non-Christian tribes to reside in a reservation, for their better education, advancement and protection. The measure was held to be a legitimate exercise of the police power. But in *Villavicencio v. Lukban,*[5] the mayor of Manila was not sustained by the Supreme Court when he "deported" some one hundred seventy women of ill-repute to Davao, for the admittedly commendable purpose of ridding the city of serious moral and health problems. As Justice Malcolm put it:

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[2] Lorenzo v. Director of Health, 50 Phil. 595.

[3] Zemel v. Rusk, 381 U.S. 1.

[4] 39 Phil. 660.

> But one can search in vain for any law, order, or regulation, which even hints at the right of the Mayor of the city of Manila or the chief of police of that city to force citizens of the Philippine Islands—and these women despite their being in a sense lepers of society are nevertheless not chattels but Philippine citizens protected by the same constitutional guarantees as are other citizens—to change their domicile from Manila to another locality. On the contrary, Philippine penal law specifically punishes any public officer who, not being expressly authorized by law or regulation, compels any person to change his residence.

Also in point is *Salonga v. Hermoso,*[6] which was a petition for *mandamus* to compel the issuance of a permit to travel abroad. The case became moot and academic when the permit was issued before the case could be heard, but Chief Justice Fernando nevertheless took the opportunity to declare as follows:

> The present petition is likewise impressed with a moot and academic aspect. In the motion to dismiss of the Solicitor General dated April 21, 1980, it was stated that the certificate of eligibility to travel had been granted petitioner. A xeroxed copy was enclosed. A resolution for dismissal is, therefore, in order.
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> From the docket of this Court, it appears that other petitions of this character had been filed in the past, namely, *Santos v. The*

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[5] 39 Phil. 778.

[6] 97 SCRA 121.

> *Special Committee on Travel Abroad,*[7] *Pimentel v. Travel Processing Center,*[8] and *Gonzales v. Special Committee on Travel.*[9] In the aforesaid cases, as in this and the earlier Salonga petition, there was no occasion to pass on the merits of the controversy as the certificates of eligibility to travel were granted. The necessity for any ruling was thus obviated. Nonetheless, in view of the likelihood that in the future this Court may be faced again with a situation like the present which takes up its time and energy needlessly, it is desirable that respondent Travel Processing Center should exercise the utmost care to avoid the impression that certain citizens desirous of exercising their constitutional right to travel could be subjected to inconvenience or annoyance.

More telling was the separate opinion of Justice Teehankee, who wrote:

> In *Salonga vs. Medalla*[*] after the therein public respondents in charge of the Travel Processing Center had issued in 1978 to herein petitioner the corresponding travel permit or certificate, I remarked that the issuance of the travel certificate necessarily is a recognition of petitioner's right to travel under the present circumstances.'
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> The circumstances have not changed in any manner. Petitioner is the holder of a Philippine passport issued on March 3, 1980 and valid up to March 1982 and has urgent medical appointments and official engagements as the only Filipino member of the Board of Trustees of the United Board for Higher Christian Education in Asia based in New York. His last trip abroad was from February 21, 1980-March 15, 1980 without any complaint from any government agency. There seems no valid basis for the delay in the issuance of petitioner's travel permit (which he had long applied for on April 1, 1980) and for his representative to have had to follow up in vain daily from the scheduled release date of April 11, 1980 until he was constrained to file the present petition on April 18th as his scheduled trip on April 23rd was in jeopardy (while all other applications had already been long acted upon favorably).

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[7] L-45748.

[8] L-49637.

[9] L-46466.

[*] L-49130, Resolution of Nov. 2, 1978.

> As the Chief Justice stresses in the Court's resolution 'it is desirable that respondent Travel Processing Center should exercise the utmost care to avoid the impression that certain citizens desirous of exercising their constitutional right to travel could be subjected to inconvenience or annoyance.' Under the antecedents, with petitioner having previously established his right to travel as sanctioned by the Ministry of Foreign Affairs which duly issued him his passport, petitioner has cause to complain that he should not be placed by respondents on their 'watch list,' without benefit of previous notice and hearing so as to be afforded the opportunity to rebut whatever adverse information might have been complied or given in secret against him.
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> Finally, it is not amiss to call the attention of the public officials concerned to the provisions of Article 27 of the Civil Code that 'Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken.'

It is now required, to avoid abuse, particularly by petty administrators with less than the proper regard for the Constitution, that the ascertainment of the grounds for the exception should be made by the executive officers only *"as may be provided by law"* specifying strict guidelines and appropriate standards. This is in keeping with the principle that ours is a government of laws and not of men and also with the canon that provisions of law limiting the enjoyment of liberty should be strictly construed against the government and in favor of the individual.

In *Manotoc v. Court of Appeals,*[9a] the petitioner who was out on bail while facing several criminal charges for estafa, filed motions for permission to leave for the United States "relative to his business transactions and opportunities." When his motions were denied, he went to the Supreme Court, invoking his right to travel. His petition was dismissed on the principal ground that the condition of the bail bond that he would be available at any time the court should require his presence was a valid restriction on his right to travel. Moreover, his reason for leaving was not urgent, and it had not been shown that his sureties had agreed to his departure. Similar action was taken in the case of Miriam D. Santiago, who wanted to leave the country for educational purposes and Ruffa Gutierrez, who pleaded certain show business commitments abroad.

[9a] 142 SCRA 149.

In the *Service Exporters Case,*[10] the Supreme Court sustained an administrative regulation, enacted pursuant to legislative authority, temporarily suspending the deployment of Filipino female domestics abroad in view of reports of their abuse and exploitation by their foreign employers. The ban on their right to travel was justified on the ground of public safety.

In *Marcos v. Manglapus,*[11] the Supreme Court, by an 8-7 vote, sustained the refusal of the government to allow the petitioner's return, on the ground that it would endanger national security. The majority held there was sufficient basis for this apprehension, as against the minority's contention that the former President was, like any other citizen, entitled to come back to his own country. Those who voted to deny the petition were Chief Justice Fernan and Justices Narvasa, Melencio-Herrera, Gancayco, Cortes, Griño-Aquino, Medialdea and Regalado. The dissenters were Justices Gutierrez, Cruz, Paras, Feliciano, Padilla, Bidin and Sarmiento.

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[10] *Supra.*

[11] 177 SCRA 669.

Suggested Reading:

Lorenzo v. Director of Health, 50 Phil. 195
Villavicencio v. Lukban, 39 Phil. 778
Rubi v. Prov. Board of Mindoro, 39 Phil. 660

Chapter 12

FREEDOM OF RELIGION

THE RIGHT TO WORSHIP is one of the basic liberties of man that have been the subject of official repression and punishment since the beginning of recorded government. Secular and spiritual matters were in the past directed by the same authorities, with the religious leader, as high priest, performing an influential and even predominant role in the determination of official policies. The annals of ancient civilization like Egypt and Babylon attest to this. So too do the temples erected by the State in reverence of the Greek and Roman gods. The slaughter of the Christians in the Coliseum was decreed by the imperial Caesars. More subtle but no less vicious was the notorious Court of the Inquisition, established by the Supreme Pontiff and supported by the King of Spain, which convicted countless innocents in the name of Jesus Christ, Who died for His religious beliefs. During the Middle Ages, national sovereignties were subject to the absolute authority of the Pope. Even after the Reformation, which was an offshoot of the protest against the dictation of the Vatican, governments continued to impose on religious freedom. Sir Thomas More was executed because he refused to recognize Henry VIII as the head of the Church of England. The official witchhunts of Salem fanned the fires of religious bigotry among the American colonists, who had gone to the New World in search of freedom. Rizal was persecuted by the clergy with the acquiescence and active cooperation of the government. Through the centuries, State and

Church worked hand-in-glove to impose an official religion upon the people and thus deprived the individual of the fundamental liberty to worship as he pleased, if he pleased at all.

Reacting to this age-old oppression, the Universal Declaration of Human Rights now affirms:

> Every one has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.[1]

Religion

Religion may be defined as "any specific system of belief, worship, conduct, etc., often involving a code of ethics and a philosophy."[2] This is a more comprehensive description than that given in *Aglipay v. Ruiz*[3] to the effect that it is "a profession of faith to an active power that binds and elevates man to his Creator." The existence of a Divine Being is not necessarily inherent in religion; the Buddhists, for example, merely espouse a way of life without reference to an omnipotent God. Mere belief in *karma,* or destiny, is a religion notwithstanding the absence of an Almighty to direct it.

In the context of the constitutional provision, religion also includes a rejection of religion, a refusal to believe in a hereafter or in the supremacy of a supernatural person with powers over life and death. One man's religion may instruct him that there is a God while another's may tell him there is no God; and both of them, under the Constitution, are entitled to their respective beliefs. In other words, religion embraces matters of faith and dogma, as well as doubt, agnosticism and atheism.

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[1] Article 18.

[2] Webster's New World Dictionary, p. 1228.

[3] 64 Phil. 201.

Religion in the Constitution

The basic provisions of the Constitution on religion are the following:

> No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.[4]
>
> The separation of Church and State shall be inviolable.[5]

The other pertinent provisions are as follows:

> Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, and non-profit cemeteries, and all lands, buildings, and improvements actually, directly and exclusively used for religious, charitable or educational purposes shall be exempt from taxation.[6]
>
> No public money or property shall ever be appropriated, applied, paid or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such except when such priest, preacher, minister or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.[7]
>
> Educational institutions, other than those established by religious groups and mission boards, shall be owned solely by citizens of the Philippines, or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The Congress may, however, require increased equity participation in all educational institutions.

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[4] Art. III, Sec. 5.

[5] Art. II, Sec. 6.

[6] Art. VI, Sec. 28(3).

[7] Art. VI, Sec. 29(2).

> The control and administration of educational institutions shall be vested in citizens of the Philippines.
>
> No educational institution shall be established exclusively for aliens, and no group of aliens shall comprise more than one-third of the enrollment in any school. The provisions of this subsection shall not apply to schools established for foreign diplomatic personnel and their dependents and, unless otherwise provided by law, for other foreign temporary residents.[8]
>
> At the option expressed in writing by the parents or guardians, religion shall be allowed to be taught to their children or wards in public elementary and high schools within the regular class hours by instructors designated or approved by the religious authorities of the religion to which the children or wards belong, without additional cost to the Government.[9]

It is noteworthy also that the Preamble to the Constitution begins with an invocation for *"the aid of Almighty God."*

Separation of Church and State

The separation of Church and State was originally, and quite adequately, expressed in the first sentence of Article III, Section 5, providing that *"no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof."* It is now rendered more emphatic by Article II, Section 6, which says that the separation shall be *"inviolable."*

The rationale of the rule is summed up in the familiar saying, "Strong fences make good neighbors." The idea is to delineate the boundaries between the two institutions and thus avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Caesar the things that are Caesar's and unto God the things that are God's."

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[8] Art. XIV, Sec. 4(2).

[9] Art. XIV, Sec. 3(3).

The doctrine cuts both ways. It is not only the State that is prohibited from interfering in purely ecclesiastical affairs; the Church is likewise barred from meddling in purely secular matters. And the reason is plain. A union of Church and State, as aptly remarked, "tends to destroy government and to degrade religion."[10] It is also likely to result in a conspiracy, well nigh irresistible because of its composite strength, against the individual's right to worship.

The wall of separation between Church and State is not a wall of hostility. The State in fact recognizes the beneficent influence of religion in the enrichment of the nation's life. "In so far as it instills into the mind the purest principles of morality,"[11] so said Justice Laurel, "the influence of religion is deeply felt and highly appreciated" by the State. Thus—

> When the Filipino people, in the preamble of their Constitution, implored the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy,' they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations. Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes. Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium. Op-

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[10] Engel v. Vitale, *infra.*

[11] Aglipay v. Ruiz, *supra.*

> tional religious instruction in the public schools is by constitutional mandate allowed. Thursday and Friday of Holy Week. Thanksgiving Day, Christmas Day, and Sundays are made legal holidays because of the secular idea that their observance is conducive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state.

According to the U.S. Supreme Court in *Everson v. Board of Education,*[12] the establishment clause simply means "that the state cannot set up a church; nor pass laws which aid one religion, aid all religion, or prefer one religion over another nor force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion; that the state cannot punish a person for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance; that no tax in any amount, large or small, can be levied to support any religious activity or institution whatever they may be called or whatever form they may adopt to teach or practice religion; that the state cannot openly or secretly participate in the affairs of any religious organization or group and vice versa."

Stated otherwise, it connotes "sponsorship, financial support, and active involvement of the sovereign in religious activity." Or to put it still another way, there will be no violation of the establishment clause if, first, the statute has a secular legislative purpose; second, its principal or primary effect is one that neither advances nor inhibits religion; and third, it does not foster an "excessive government entanglement with religion."[13]

"The government is neutral, and while protecting all, it prefers none, and it disparages none." All here applies both to the believer and the non-believer. Freedom of religion includes freedom from religion; the right to worship includes the right not to worship.

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[12] 330 U.S. 1.

[13] Lemon v. Kurtzman, 403 U.S. 602.

Applying these criteria, the U.S. Supreme Court in the famous *School Prayer Case,*[14] declared as unconstitutional the recitation by the students in public schools in New York of a prayer composed by the board of regents, concededly for the purpose of setting the spiritual tone of the schoolday. The Court, with only one member dissenting, declared that "it is no part of the business of government to compose official prayers for any group of the American people, to recite as a part of a religious program carried on by the government." While welcome to the believer, the prayer was not acceptable to the non-believer, although, significantly, he was not required to recite it. The State thus aligned itself with the worshiper as against the atheist and violated its obligation to maintain an attitude of strict neutrality in religious matters. The fact that the prayer was addressed to a non-denominational "Almighty God," without any sectarian identification, did not excuse the State from this duty of impartiality.

The *Engel Case* served as the main basis of *School District of Abington Township v. Schempp,*[15] decided a year later, where the Supreme Court struck down a Pennsylvania statute that required that "at least ten verses from the Holy Bible" be read daily, without comment, in all public schools of the state. The requirement was held to be a "religious exercise" that violated the establishment clause.

In the earlier case of *Tudor v. Board of Education,*[16] it was shown that the Gideon Society, a religious group engaged in the distribution of free copies of the Bible in obedience to the scriptual mandate to "go forth and spread the word of God," enlisted the services of public school teachers who, among other things, distributed the request forms among the students, collected them after they had been accomplished by the students' parents, returned them to the Society, later received the copies requested and then delivered these to the students. The U.S. Supreme Court declared that the teachers, employing government time, were participating in a religious activity as they were an essential cog in the machinery of distribution of the Bibles.

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[14] Engel v. Vitale, 370 U.S. 421.

[15] 374 U.S. 203.

[16] 14 N.J. 31.

But in *Zorach v. Clauson*,[17] the U.S. Supreme Court held that the wall of separation between Church and State had not been breached by a released-time arrangement which enabled the students in a public school to attend religious instruction classes in a nearby private building. At their request, they had been excused from their classes by the school authorities during the time of the religious instruction, but subject to their obligation to make up for the time lost during another period. The Court ruled that the State had merely bent over backward to accommodate the religious needs of the students and had not thereby actually involved itself in a religious activity in violation of the Constitution.

In *Board of Education v. Allen*,[18] a law required the petitioner to lend textbooks free of charge to all students from grades 7 to 12, including those attending private schools. Attacked on constitutional grounds insofar as it extended its benefits to parochial schools, the statute was sustained by the U.S. Supreme Court. "The law merely makes available to all children the benefits of a general program to lend school books free of charge. Books are furnished at the request of the pupil and ownership remains, at least technically, in the State. Thus, no funds or books are furnished to parochial schools, and the financial benefit is to parents and children, not to schools. Perhaps free books make it more likely that some children choose to attend a sectarian school, but that was true of the state-paid bus fares in *Everson* and does not alone demonstrate an unconstitutional degree of support for a religious institution."

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[17] 343 U.S. 306.

[18] 392 U.S. 236.

In the above-cited *Everson Case*, the law sustained by the U.S. Supreme Court provided free transportation for all schoolchildren without discrimination, including those attending parochial schools. "Of course, books are different from buses," the Supreme Court observed in *Allen*. "How ever, the language of (the statute) does not authorize the loan of religious books, and the State claims no right to distribute religious literature. Although the books loaned are those required by the parochial schools for use in specific courses, each book loaned must be approved by the public school authorities; only secular books may receive approval."

In both *Everson* and *Allen,* it should be noted, the government aid was given directly to the student and his parents, not to the church-related school.

In the Philippines, the doctrine of separation of Church and State should be read specifically with Article VI, Section 29(2), prohibiting appropriations of public funds for sectarian purposes. The language is quite strict, to wit, "No *public money or property shall ever be appropriated, applied, paid or used, directly or indirectly, for the use, benefit or support of any sect, church, denomination, sectarian institution or system of religion, or for the use, benefit or support of any priest, preacher, minister or other religious teacher or dignitary as such. . .*"

If the interpretation were to be similarly strict, then the rulings in the *Everson, Allen* and *Zorach* cases might not be applicable here. The Supreme Court, however, employed a liberal approach in the leading case of *Aglipay v. Ruiz,*[19] where it was held that any benefit indirectly enjoyed by a religious institution, as long as such benefit was only incidental to a legitimate secular objective, would not violate the prohibition.

In this case, the government had authorized a special stamp issue on the occasion of the observance in Manila of the 33rd International Eucharistic Congress under the sponsorship of the Catholic Church. The petitioner, as head of the Philippine Independent Church, assailed the measure and contended that it violated the Constitution because it benefited a particular religion. The Supreme Court, on examining the background facts, discovered that the original design of the stamp featured a picture of a Catholic chalice, but this was later rejected in favor of a map of the Philippines under which appeared the caption, "Seat, 33rd International Eucharistic Congress, Feb. 3-7, 1937." As the purpose of the stamp issue was evidently to focus attention not on the Eucharistic Congress but on its site, the idea being to attract tourists to our country and not primarily to publicize the religious event, it was held that the stamp issue was not invalid.

It has also been held that the above provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general."[20] Hence, a public street may be used for a religious procession even as it is available for a civic parade, in the same way that a public plaza is not barred to a religious rally if it may also be used for a political assemblage.

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[19] *Supra.*

[20] People v. Fernandez, C.A. G.R. No. L-1128 (1945).

In *Garces v. Estenzo*,[21] it was held that there was no violation of the Constitution where it was shown that the money used by a barangay council for the purchase of a religious image was raised by it from private contributions and did not constitute public funds. True enough. But how about the fact that this government body actively involved itself in a religious activity and used its official influence for the benefit of a particular religion?

Subject to the four exceptions specifically mentioned, payment of public funds is prohibited to ecclesiastics only "as such," which means that they may be paid such funds if they serve the government in a non-ecclesiastical capacity. Thus, priests who served in the Constitutional Commission of 1986 were entitled to be paid *per diems* from public funds for services rendered by them not as ecclesiastics but as members of the Commission.

The Constitution itself also provides for the exemption from property taxes of religious institutions and all lands, buildings and improvements actually, directly and exclusively devoted to religious purposes.

Finally, it should be stressed that by specific permission in the Constitution, and as an exception to the general rule, public elementary and high schools may be used for optional religious instruction in accordance with Article XIV, Section 3(3).

(1) Intramural Religious Disputes

It is clear that intramural disputes regarding religious dogma and other matters of faith are outside the jurisdiction of the secular authorities. These are questions that may be resolved by the religious authorities themselves, and among themselves only. It is also settled that whatever dogma is adopted by a religious group cannot be binding upon the State if it contravenes its valid laws. Thus, while the Church may provide for the dissolution of marriage by its own courts, the ecclesiastical decree cannot prevail against the Civil Code, which prohibits divorce.

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[21] 104 SCRA 510.

Where the dispute involves the property rights of the religious group, or the relations of the members where property rights are involved, the civil courts may assume jurisdiction. Accordingly, in *Fonacier v. Court of Appeals*,[22] the Supreme Court, applying the pertinent laws and the internal rules of the Philippine Independent Church, resolved the conflict between two persons claiming to be the head of the church and thus vested with control of its properties.

In the earlier case of *Gonzales v. Archbishop of Manila*,[23] the Supreme Court held that "where a civil right depends upon some matter pertaining to ecclesiastical affairs, the civil tribunal tries the civil right and nothing more, taking the ecclesiastical decision out of which the civil right has arisen as it finds them, and accepting those decisions as matters adjudicated by another jurisdiction."

Religious Profession and Worship

The right to religious profession and worship has a twofold aspect, *viz.*, freedom to believe and freedom to act on one's beliefs.[24] The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.

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[22] 96 Phil. 417.

[23] 51 Phil. 420.

[24] Cantwell v. Connecticut, *infra*.

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul—in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. "Men may believe what they cannot prove." Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One's Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all the other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Justice Frankfurter put it succinctly: "The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma."[25]

Accordingly, while one has full freedom to believe in Satan, he may not offer the object of his piety a human sacrifice, as this would be murder. Those who literally interpret the Biblical command to "go forth and multiply" are nevertheless not allowed to contract plural marriages in violation of the laws against bigamy. A person cannot refuse to pay taxes on the ground that it would be against his religious tenets to recognize any authority except that of God alone. An atheist cannot express his disbelief in acts of derision that wound the feelings of the faithful. The police power can be validly asserted against the Indian practice of the *suttee,* born of deep religious conviction, that calls on the widow to immolate herself at the funeral pile of her husband.

But all this does not suggest that the authority of the State shall at all times prevail over the right of the individual to religious profession and worship. There are many instances, in fact, when the reverse is true. As long as it can be shown that the exercise of the right does not impair the public welfare, the attempt of the State to regulate or prohibit such right would be an unconstitutional encroachment.

In *Cantwell v. Connecticut,*[26] for example, a statute made it punishable for any one to solicit money or any other form of assistance except for a religious, charitable or philanthropic cause as determined by the secretary of the public welfare council. The U.S. Supreme Court struck it down as censorship of religion. Noting the extraordinary power given to the secretary, the Court commented that "if he finds that the cause is not that of religion, to solicit for it becomes a crime." Furthermore, Cantwell and his sons were soliciting in a peaceful manner. When one of the records they played angered some of the hearers, who asked them to leave, they immediately did so. Such solicitation for religious purposes, even if abrasive, could not be validly prohibited.

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[25] W. Va. Board of Education v. Barnette, 219 U.S. 624.

[26] 310 U.S. 296.

In *Marsh v. Alabama*,[27] a woman distributed religious literature in the premises of a privately-owned town against the expressed prohibitions of the town authorities. Prosecuted for trespass, she was acquitted by the U.S. Supreme Court, which upheld her religious liberty as against the property rights of the corporation that owned the town. The Court said:

> The corporation's property interest in the town is not decisive of the issue. Ownership does not always mean absolute dominion. The more an owner for his advantage opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it. Whether a corporation or a municipality owns or possesses the town, the public in either case has an identical interest in the functioning of the community in such manner that the channel of communication remains free. The town of Chickasaw does not function differently from other towns. Its managers cannot curtail the liberty of press and religion of these people consistently with the purposes of the constitutional guarantees, and a state statute, as the one here involved which enforces such action by criminally punishing those who attempt to distribute religious literature, clearly violates the First and Fourteenth Amendments of the Constitution. When we balance the Constitutional rights of owners of property against those of the people to enjoy freedom of the press and religion, as we must

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[27] 66 U.S. 276.

> here, we remain mindful of the fact that the latter occupy a preferred position.

In *American Bible Society v. City of Manila,*[28] a religious corporation engaged in the sale of Bibles and other religious articles was required to obtain a license and pay the corresponding fee for being engaged in the sale of merchandise. The Supreme Court held:

> The constitutional guaranty of free exercise and enjoyment of religious profession and worship carries with it the right to disseminate religious information. Any restraint of such right can be justified like other restraints of freedom of expression on the ground that there is a clear and present danger of any substantive evil which the State has the right to prevent. In the case at bar, it is true that the price asked for religious articles was in some instances a little higher than the actual cost of the same, but this cannot mean that the plaintiff was engaged in the business or occupation of selling said 'merchandise' for profit. For this reason, the provision of the City Ordinance No. 2529, as amended, which requires the payment of a license fee for conducting the business of general merchandise cannot be applied to plaintiff society, for in doing so, it would impair its free exercise and enjoyment of its religious profession and worship, as well as its rights of disseminating of religious beliefs.

The above doctrine was not applied in the *VAT Case* because as the Supreme Court put it, the registration fee of P1,000 "is not imposed for the exercise of a privilege but only for the purpose of defraying part of the cost of registration. The registration requirement is a central feature of the VAT system. . . The registration fee is a mere administrative fee, one not imposed on the exercise of a privilege, much less a constitutional right."[29]

The test to determine which shall prevail as between religious freedom and the powers of the State is, as always, the test of reasonableness. In the majority of cases, this test is easily applied. In some borderline situations, however, the very resiliency of the criterion has provoked those deep disagreements that have made Constitutional Law a continuing debate between liberty and authority. A case in point is the flag salute controversy.

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[28] 101 Phil. 386.

[29] Tolentino v. Sec. of Finance, 235 SCRA 630.

In *West Virginia Board of Education v. Barnette*,[30] all students in public schools in West Virginia were required to participate in a flag ceremony at which they were made to recite an oath of allegiance and to salute the American flag while it was being raised or lowered. Those who refused were subject to expulsion and until readmitted upon compliance were to be proceeded against as "delinquents"; and their parents were liable for prosecution and punishment. Members of the sect known as Jehovah's Witnesses protested, claiming that the ceremony violated their interpretation of Exodus, Chapter 20, verses 4 and 5, of the Bible, reading: "Thou shalt not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down to them, nor serve them." To them the flag was an image within this command and for this reason they refused to salute it.

The U.S. Supreme Court sustained the challenge, holding *inter alia* as follows:

> Lastly, and this is the very heart of the Gobitis opinion, it reasons that 'national unity is the basis of national security,' that the authorities have the right to select appropriate means for its attainment,' and hence reaches the conclusion that such compulsory measures toward 'national unity' are constitutional. Id. at 595. Upon the verity of this assumption depends our answer in this case.

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[30] *Supra.*

> National unity as an end which officials may foster by persuasion and example is not in question. The problem is whether under our Constitution compulsion as here employed is a permissible means for its achievement.
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> Struggles to coerce uniformity of sentiment in support of some end thought essential to their time and country have been waged by many good as well as by evil men. Nationalism is a relatively recent phenomenon but at other times and places the ends have been racial or territorial security, support of a dynasty or regime, and particular plans for saving souls. As first and moderate methods to attain unity have failed, those bent on its accomplishment must resort to an ever-increasing severity. As governmental pressure toward unity becomes greater, so strife becomes more bitter as to whose unity it shall be. Probably no deeper division of our people could proceed from any provocation than from finding it necessary to choose what doctrine and whose program public educational officials shall compel youth to unite in embracing. Ultimate futility of such attempts to compel coherence is the lesson of every such effort from the Roman drive to stamp out Christianity as a disturber of its pagan unity, the Siberian exiles as a means to religious and dynastic unity, the Siberian exiles as a means to Russian unity, down to the fast failing efforts of our present totalitarian enemies. Those who begin coercive elimination of dissent soon find themselves exterminating dissenters. Compulsory unification of opinion achieves only the unanimity of the graveyard.

Our Supreme Court arrived at a different conclusion in *Gerona v. Secretary of Education*,[31] where the flag ceremony was sustained as a valid exercise of the police power aimed at inculcating the virtue of patriotism in the students. This ruling was the subject of sustained attack from libertarians until it was finally reversed in *Ebralinag v. The Division Superintendent of Schools of Cebu*[31a] which upheld the religious freedom of the petitioners, who as in Gerona, were members of the Jehovah's Witnesses and believed that they should not salute the flag because it was in their view an "image" to which the Bible prohibited them from rendering obeisance.

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[31] 106 Phil. 2.

[31a] 219 SCRA 256 (1993).

Speaking through Justice Carolina Griño-Aquino, the Supreme Court declared:

> We are not persuaded that by exempting the Jehovah's Witnesses from saluting the flag, singing the national anthem and reciting the patriotic pledge, this religious group which admittedly comprises a "small portion of the school population" will shake up our part of the globe and suddenly produce a nation "untaught and uninculcated in and unimbued with reverence for the flag, patriotism, love of country and admiration for national heroes" (Gerona vs. Sec. of Education, 106 Phil. 224). After all, what the petitioners seek only is exemption from the flag ceremony, not exclusion from the public schools where they may study the Constitution, the democratic way of life and form of government, and learn not only the arts, sciences, Philippine history and culture but also receive training for a vocation or profession and be taught the virtues of "patriotism, respect for human rights, appreciation for national heroes, the rights and duties of citizenship, and moral and spiritual values" (Sec. 3[2], Art. XIV, 1987 Constitution) as part of the curricula. Expelling or banning the petitioners from Philippine schools will bring about the very situation that this Court had feared in Gerona. Forcing a small religious group, through the iron hand of the law, to participate in a ceremony that violates their religious beliefs, will hardly be conducive to love of country or respect for duly constituted authorities.

Then there is the case of *German v. Barangan*,[32] where some fifty persons who were walking to St. Jude Church to pray for "an end to violence" were barred by the military and warned against a similar march later. They went to the Supreme Court to protest the prohibition but their petition was denied. The plurality decision penned by Justice Escolin, while recognizing their freedom of religion, nevertheless stressed that it was subject to regulation. Noting that they wore yellow T-shirts and chanted antiadministration invectives during their march, the *ponencia* held that the petitioners were not sincere in their profession of religious liberty and were using it to express their opposition to the government. Even assuming their good faith, continued Justice Escolin, there was still the necessity of protecting Malacañang, the official residence of the President of the Philippines, which was near the church, in case the march went out of hand.

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[32] 135 SCRA 514.

Only five other justices joined in this decision, one because the issue had become moot. Two concurred in the result, one of them also dissenting in part. Outright dissents were filed by five others, to wit, Justices Teehankee, Makasiar, Abad Santos, Herrera, and Relova, mainly on the ground that there was no clear and present danger.

Justice Teehankee declared in part:

> "The burden to show the existence of grave and imminent danger that would justify prior restraint and bar a group of persons from entering the church of their choice for prayer and worship lies on the military or police officials who would so physically restrain them. Indeed, there is no precedent in this time and age where churchgoers whose right of free exercise of their religion is recognized have been physically prevented from entering their church on grounds of national security. On the other hand, it does not lie within the competence nor authority of such officials to demand of churchgoers that they show and establish their 'sincerity and good faith . . . in invoking the constitutional guarantee of freedom of religious worship and of locomotion' as a pre-condition, as seems to be the thrust of the majority decision.
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> * * *
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> "Good faith on both sides is and must be presumed. Thus, petitioners' manifestations of their sincere intention as Christians to gather together in prayer at St. Jude Church who is known as the Patron of the Impossible should be taken in good faith. It would seem that no court petition should be necessary to enable a group of persons such as petitioners to freely proceed and enter a church of their religion and choice and therein hear mass and say their prayers. We are basically a people of peace who believe in the power of prayer and pray silently in the land."

For his part, Justice Makasiar pointed out that the march was orderly, and the wearing of the yellow shirts and emblems was a form of expression that was entitled to constitutional protection. Justice Abad Santos commented wryly: "The Court took a big step forward in the We Forum case. It has taken another step but this time in the other direction.

Religious Tests

The constitutional prohibition against religious tests is aimed against clandestine attempts on the part of the government to prevent a person from exercising his civil or political rights because of his religious beliefs.

In *In re Summers*,[33] a person was denied admission to the bar because of his inability to take in good faith an oath to support the Constitution of Illinois which contained a provision requiring service in the militia in times of war. Petitioner was a conscientious objector and was opposed to the use of force. The Illinois Supreme Court held him morally unfit to practice law because "he will not use force to prevent wrong, no matter how aggravated." The U.S. Supreme Court sustained.

The majority declared: "It is said that the action of the Supreme Court of Illinois is contrary to the principles of that portion of the First Amendment which guarantees the free exercise of religion. Of course, under our constitutional system, men could not be excluded from the practice of law, or indeed from following any other calling, simply because they belong to any of our religious groups, whether Protestant, Catholic, Quaker or Jewish, assuming it conceivable that any state of the Union would draw such a religious line. We cannot say that any such purpose to discriminate motivated the action of the Illinois Supreme Court."

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[33] 325 U.S. 561.

Justice Black dissented: "Under our Constitution, men are punished for what they do or fail to do and not for what they think and believe. Freedom to think, to believe and to worship has too exalted a position in our country to be penalized on such an illusory basis."

An attempt to avoid military duties on the ground among others of conscientious scruples was brushed aside by our Supreme Court in *People v. Zosa.*[34] Basis of the decision was Article II, Section 4, which now reads: "*The prime duty of the Government is to serve and protect the people. The Government may call upon the people to defend the State and, in the fulfillment thereof, all citizens may be required, under conditions provided by law, to render personal military or civil service.*"

As accommodation perhaps to his religious misgivings, the conscientious objector, provided his sincerity is first established, can be assigned non-military duties in defense of the State. This might, however, raise questions of equal protection as those subjected to combat duties and to the risk of death may claim discrimination. The answer would probably lie in whether or not there is a substantial distinction between these citizens and those whose religious beliefs prevent them in conscience from taking human life.

Suggested Reading:

Fonacier v. Court of Appeals, 96 Phil. 417

West Virginia Board of Education v. Barnette, 219 U.S. 624

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[34] 38 O.G. 1676.

Gerona v. Secretary of Education, 106 Phil. 2

Pamil v. Teleron, 86 SCRA 413

Aglipay v. Ruiz, 64 Phil. 201

Engel v. Vitale, 370 U.S. 421

Board of Education v. Allen, 392 U.S. 236

Victoriano v. Elizalde Rope Workers Union, 59 SCRA 54

German v. Barangan, 135 SCRA 514

Ebralinag v. The Division Superintendent of Schools of Cebu, 219 SCRA 259

Chapter 13

FREEDOM OF EXPRESSION

FREEDOM OF SPEECH has been defined by Wendell Philips as "at once the instrument and the guaranty and the bright consummate flower of all liberty." This definition covers freedom of expression in general, which embraces a number of cognate rights all aimed at insuring the free and effective communication of ideas from mind to mind. The other rights, in addition to freedom of speech, are freedom of the press, freedom of assembly, freedom of petition, freedom of religion, the right of association, the right to access to information on matters of public concern, and the right not to be detained solely by reason of one's political beliefs and aspirations.

It is stressed at the outset that freedom of expression is available only insofar as it is exercised for the discussion of matters affecting the public interest. Purely private matters do not come within the guaranty. Invasion of privacy is not sanctioned by the Constitution. Only "matters that touch the heart of the existing order," in the words of the U.S. Supreme Court,[1] may be a valid subject of this freedom.

Importance

The importance of freedom of expression is easily appreciated. Notably, this is the first right that is always curtailed when a free society falls under a repressive regime. Our Constitution provides that *"sovereignty resides in the people"*[2] who manifest it regularly through their suffrages and, more frequently and generally, by the assertion of their freedom of expression. This sovereignty would be negated if they were denied the opportunity to participate in the shaping of public affairs through the arbitrary imposition upon them of the ban of silence.

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[1] W. Va. Board of Education v. Barnette, 219 U.S. 624.

As an individual "particle of sovereignty," every citizen has a right to offer his views and suggestions in the discussion of the common problems of the community or the nation. This is not only a right but a duty. From the mass of various and varied ideas proposed, the people can, in their collective wisdom and after full deliberation, choose the best remedies to the difficulties they face. The scope alone of the options, let alone the latitude with which they are considered, can insure a far better choice than that made by the heedless dictator in the narrow confines of his mind and the loneliness of his pinnacle.

The philosophical basis of freedom of expression was eloquently stated by Justice Holmes in *Abrams v. U.S.*,[3] thus:

> When men have realized that time has upset many fighting faiths, they may come to believe, more than they believe the very foundations of their own conduct, that the ultimate good desired is better reached by a free trade in ideas—that the best test of truth is the power of the thought to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. It is an experiment, as all life is an experiment. Every year, if not every day, we have to wager our salvation upon some prophecy based upon imperfect knowledge. While that experiment is part of our system I think that we should be eternally vigilant against attempts to check

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[2] Art. II, Sec. 1.

[3] 250 U.S. 610.

> the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country.

Scope

The ideas that may be expressed under this freedom are not confined only to those that are sympathetic or acceptable to the majority. That would make the freedom more shadow than substance. To be really meaningful, it should permit the articulation of even the unorthodox view, though it be hostile to or derided by others, or "induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger."[4] One of the functions of this freedom is precisely, according to the U.S. Supreme Court, "to invite dispute."[5] Unity is too high a price to pay for the loss of liberty. Justice Holmes put it aptly when he said that this right exists not so much for the thought that agrees with us as for the thought that we detest.[6] Voltaire was grandiloquent: "I may not agree with what you say, but I will defend to the death your right to say it."

The freedom to speak includes the right to be silent. To paraphrase a famous case,[7] the Bill of Rights which guarantees to the individual the liberty to utter what is in his mind also guarantees to him the liberty not to utter what is not in his mind. No less important, this freedom also includes the right to an audience, in the sense that the State cannot prohibit the people from hearing what a person has to say, whatever be the quality of his thoughts. This right, however, is not demandable against those unwilling to listen, who may not be herded by the government into a captive audience. This means, in fine, that the right to listen also includes the right not to listen. As Socrates said, this freedom was meant not only to protect the minority who want to talk but also to benefit the majority who refuse to listen.

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[4] Terminiello v. City of Chicago, 337 U.S. 1.

[5] *Ibid.*

[6] U.S. v. Schwimmer, 279 U.S. 644.

[7] The Barnette Case, *supra.*

Modes of Expression

Freedom of expression is usually exercised through language, oral and written. Symbolisms may also be used, like the clenched fist, the bended knee, the salute to the flag, the flag itself, the mace of the legislature, the picket line, pictures, caricatures and cartoons. Wordless, they articulate.

The novels of Rizal were a potent weapon against Spanish tyranny, Tom Paine's pamphlets against British rule, Emile Zola's articles against the persecution of Dreyfuss. Placards, graffiti, slogans and battlecries, poems and song lyrics, speeches and orations, movies, stage plays, and television and radio presentations—all these and more can be effective media for the discussion of public issues.

Elements

The basic constitutional provision is Article III, Section 4, which reads:

> No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

Bolstering this provision, the Bill of Rights also contains in Section 18(1) the following new rule:

> No person shall be detained solely by reason of his political beliefs and aspirations.

The elements of freedom of expression are: (1) freedom from previous restraint or censorship; and (2) freedom from subsequent punishment.

(1) Freedom from Censorship

In his "Appeal for the Liberty of Unlicensed Printing," John Milton declared the impossibility of finding a man base enough to accept the office of censor and at the same time good enough to perform its duties. This statement reflected the general disapprobation of censorship as an unlawful curtailment of the free flow of ideas. Censorship conditions the exercise of freedom of expression upon the prior approval of the government. Only those ideas acceptable to it are allowed to be disseminated; all others are restricted or suppressed. The censor thus assumes the unlikely role of political, moral, social and artistic arbiter for the people, usually applying only his own subjective standards in determining what is good and what is not good for them. Such authority is anathema in a free society.

Accordingly, it has been held that it is not lawful to require the obtention from the authorities of a speaker's permit before a person may deliver a speech, or the previous submission of the speech for their approval (or disapproval). Neither can it be provided that no work may be published unless it is first cleared by a government censor and all the parts he objects to are deleted. In one case,[8] it was provided that no book shall be allowed for distribution unless it shall first have been declared by the authorities as proper for minors, in the interest of their morals. The law was struck down by the U.S. Supreme Court because it unduly restricted the reading tastes of adults.

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[8] Butler v. Michigan, 352 U.S. 380.

In *Near v. Minnesota*[9] a statute provided for the suppression of any periodical found, after hearing, on the basis of its past issues, to be obscene, malicious, scandalous or defamatory. The law was annulled. In *Kingsley Books v. Brown,*[10] however, the U.S. Supreme Court upheld a law which authorized the suppression of any issue of any periodical if and as such issue was found to be objectionable after judicial hearing, but without affecting the right of the periodical to continue publication. The statute was aimed against issues already published, not against future issues.

Censorship need not partake of total suppression; even restriction of circulation is unconstitutional. In the leading case of *Grosjean v. American Press Co.,*[11] a statute imposing a tax upon all periodicals publishing more than 20,000 copies per issue was declared invalid because it tended to limit the circulation of any such periodical seeking to avoid the payment of the tax. The tax was characterized as a tax on knowledge. It was an indirect attempt to restrict the wide dissemination of ideas, tracing its roots to the unpopular schemes of the English monarch to discourage criticisms against the throne. "A free press stands as one of the great interpreters between the government and the people," Justice Sutherland declared, "To allow it to be fettered is to fetter ourselves."

In the case of *New York Times v. United States,*[12] the respondent sought to enjoin the publication by two newspapers of certain official classified papers relating to

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[9] 283 U.S. 697.

[10] 354 U.S. 436.

[11] 297 U.S. 233.

[12] 403 U.S. 713.

American policy on the Vietnam war. Such publication, it was argued, would be detrimental to the security of the United States. The U.S. Supreme Court, in sustaining the periodicals, declared:

> 'Any system of prior restraints of expression comes to this Court bearing a heavy presumption against its validity. *Bantam Books, Inc. v. Sullivan,* 372 U.S. 58, 700 (1963); see also *Near v. Minnesota,* 283 U.S. 697 (1931). The government thus carries a heavy burden of showing justification for the enforcement of such a restraint.' *Organization for a Better Austin v. Keefe,* U.S. (1971). The District Court for the Southern District of New York in the New York Times case and the District Court of Appeals for the District of Columbia circuit in the Washington Post case held that the Government had not met that burden. We agree.

Amplifying on this *per curiam* decision, Justice Black observed:

> In the first Amendment, the Founding Fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed, not the governors. The Government's power to censor the press was abolished so that the press would remain forever free to censure the Government. The press was protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government. And paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell. In my view, far from deserving condemnation for their courageous reporting, the New York Times, the Washington Post, and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Viet Nam war, the newspapers nobly did precisely that which the Founders hoped and trusted they would do.

In our country, regrettably, there does not appear to be the same vigilance in the protection of the right against censorship. Take *Gonzales v. Commission on Elections,*[13] for example. The law in this case prohibited, except during the prescribed election period, "the solicitation or undertaking of any campaign or propaganda, whether directly or indirectly, by an individual, the making of speeches, announcements or commentaries or holding of interviews for or against the election of any party or candidate for public office, or the publication or distribution of campaign literature or materials." This provision was sustained although only four justices supported it, as the other seven who opposed were one vote short of the two-thirds majority then needed to annul it.[13a] The justification given was that the inordinate preoccupation of the people with politics tended toward the neglect of the other serious needs of the nation and the pollution of its suffrages.

In *Iglesia ni Cristo v. Court of Appeals,*[13b] two basic issues were raised, to wit, whether the Movies and Television Review and Classification Board had the power to review the petitioner's programs and clear them for showing on television and, assuming it had, whether it gravely abused its discretion in prohibiting their exhibition as x-rated material.

The subject programs were barred from public viewing by the Board for attacking certain doctrines and practices of the Catholic and Protestant religions, but were sustained by the regional trial court, which also prohibited the Board from requiring the petitioner to submit its programs to it for previous clearance. The Court of Appeals reversed the trial court, prompting the INC to go to the Supreme Court for relief.

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[13] 27 SCRA 835.

[13a] Art. VIII, Sec. 10, 1935 Constitution.

[13b] 259 SCRA 529.

The majority of the Court held for the Board on the first issue but found that it should not have banned the telecast of the programs because they did not attack but merely criticized the other religions in the exercise by the INC of its freedom of expression and religion. The criticisms did not create a clear and present danger requiring the prior restraint of the State, according to Justice Puno, who was joined by Justices Regalado, Davide, Romero, Francisco and Torres, with Chief Justice Narvasa concurring in the result. Justices Padilla, Melo, and Kapunan, while agreeing that the Board had indeed committed grave abuse of discretion, filed strong dissents impugning its censorship powers as violative of the Bill of Rights.

The strange obiter in the case of *Santiago v. Far East Broadcasting*,[14] it is hoped, will be rejected by the Supreme Court in future decisions. This was a petition for *mandamus* to compel the respondent to allow the campaign manager of the opposition party to deliver a speech over the radio without first submitting a copy thereof for purposes of censorship by the Radio Board as required by a law. The Supreme Court, in denying the petition on statutory grounds, made the following remarks:

> (The petitioner) impliedly admits—and correctly, we think—that a speech that may endanger public safety may be censored and disapproved for broadcasting. How would the censor verify the petitioner's claim that the speeches he intended to broadcast offered no danger to public safety or public morality, if the petitioner refused to submit the manuscript or even the gist thereof?

On the other side of the coin, in fairness, must be mentioned the case of *Primicias v. Fugoso*,[15] where the mayor of Manila sought indirectly to muzzle the opposition party by denying its application for a permit to hold a public meeting at Plaza Miranda. The Supreme Court ordered the permit issued, holding that the respondent could only reasonably regulate, not absolutely prohibit, the use of public places for the purpose indicated. (The meeting was finally held as planned, the mayor's fears of disorders did not materialize, and the people were all the more enlightened on the current issues raised by the speakers.)

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[14] 73 Phil. 408.

[15] 80 Phil. 71.

In *Mutuc v. Commission on Elections*,[16] the respondent prohibited the use of taped jingles in the mobile units used by the petitioner in his election campaign. Petitioner protested, claiming infringement of his freedom of expression. He was sustained by the Supreme Court, thus: "What respondent Commission did, in effect, was to impose censorship on petitioner, an evil against which this constitutional right is directed. Nor could respondent Commission justify its action by the assertion that petitioner, if he would not resort to taped jingles, would be free, either by himself or through others, to use his mobile loudspeakers. Precisely, the constitutional guarantee is not to be emasculated by confining it to a speaker having his say, but not perpetuating what is uttered by him through tape or other mechanical contrivances. If this Court were to sustain respondent Commission, then the effect would hardly be distinguishable from previous restraint. That cannot be validly done. It would negate indirectly what the Constitution in express terms assures."

In the *Burgos Case*,[17] the offices of the Metropolitan Mail and the We Forum were, after the search of the premises, padlocked and sealed by the military authorities, with the result that the printing and publication of the newspapers were discontinued. This led Justice Escolin to decry:

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[16] 36 SCRA 228.

[17] *Supra.*

> Such closure is in the nature of previous restraint or censorship abhorrent to the freedom of the press guaranteed under the fundamental law, and constitutes a virtual denial of petitioners' freedom to express themselves in print. This state of being is patently anathematic to a democratic frameworks where a free, alert and even militant press is essential for the political enlightment and growth of the citizenry.

The issue in *National Press Club v. Commission on Elections*[17a] was the validity of Sec. 11 of Republic Act 6646, prohibiting:

> b) . . . any newspapers, radio broadcasting or television station, other mass media, or any person making use of the mass media to sell or to give free of charge print space or air time for campaign or other political purposes except to the Commission as provided under Sections 90 and 92 of Batas Pambansa Blg. 881. Any mass media columnist, commentator, announcer or personality who is a candidate for any effective public office shall take a leave of absence from his work as such during the campaign period.

In sustaining this provision, the Supreme Court, through Justice Feliciano, declared *inter alia:*

> Section 11 (b) does, of course, limit the right of free speech and of access to mass media of the candidates themselves. The limitation, however, bears a clear and reasonable connection with the constitutional objective set out in Article IX(C)(4) and Article II (26) of the Constitution. For it is precisely in the unlimited purchase of print space and radio and television time that the resources of the financially affluent candidates are likely to make a crucial difference. Here lies the core problem of equalization of the situations of the candidates with deep pockets and the candidates with shallow or empty pockets that Article IX(C)(4) of the Constitution and Section 11(b) seek to address. That the statutory mechanism which Section 11(b) brings into operation is designed and may be expected to bring about or promote equal opportunity, and equal time and space, for political candidates to inform all and sundry about themselves, cannot be gainsaid.

[17a] 207 SCRA 1.

> Finally, the nature and characteristics of modern mass media, especially electronic media, cannot be totally disregarded. Realistically, the only limitation upon the free speech of candidates imposed is on the right of candidates to bombard the helpless electorate with paid advertisements commonly repeated in the mass media *ad nauseam*. Frequently, such repetitive political commercials when fed into the electronic media themselves constitute invasions of the privacy of the general electorate. It might be supposed that it is easy enough for a person at home simply to flick off his radio or television set. But it is rarely simple. For the candidates with deep pockets may purchase radio or television time in many, if not all, the major stations or channels. Or they may directly or indirectly own or control the stations of channels themselves. The contemporary reality in the Philippines is that, in a very real sense, listeners and viewers constitute a "captive audience."
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> The paid political advertisements interjected into the electronic media and repeated with mind-deadening frequency, are commonly intended and crafted, not so much to inform and educate as to condition and manipulate, not so much to provoke rational and objective appraisal of candidates' qualifications or programs as to appeal to the non-intellective faculties of the captive and passive audience. The right of the general listening and viewing public to be free from such intrusions and their subliminal effects is at least as important as the right of candidates to advertise themselves through modern electronic media and the right of media enterprises to maximize their revenues from the marketing of "packaged" candidates.

Dissenting with Justices Gutierrez and Paras, Justice Cruz observed:

> I realize only too well that the ideas that may be conveyed by the prohibited media advertisements will mostly be exaggerations or distortions or plain poppycock and may intrude upon our patience. We may indeed be opening a Pandora's box. But these are unavoidable in the free society. As part of the larger picture, these impositions are only minor irritations that, placed in proper perspective, should not justify the withdrawal of the great and inalienable liberty that is the bedrock of this Republic. It is best to remember in this regard that freedom of expression

> exists not only for the thought that agrees with us, to paraphrase Justice Holmes, but also for the thought that we abhor.
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> I submit that all the channels of communication should be kept open to insure the widest dissemination of information bearing on the forthcoming elections. An uninformed electorate is not likely to be circumspect in the choice of the officials who will represent them in the councils of government. That they may exercise their suffrages wisely, it is important that they be apprised of the election issues, including the credentials, if any, of the various aspirants for public office. This is especially necessary now in view of the dismaying number of mediocrities who, by an incredible aberration of ego, are relying on their money, or their tinsel popularity, or their private armies, to give them the plume of victory.

The ruling in the above case was reiterated in *Osmeña v. Commission on Elections.*[17b]

But in the case of *Adiong v. Commission on Elections*"[17c] the Supreme Court held through Justice Gutierrez:

> The posting of decals and stickers on cars, calesas, tricycles, pedicabs and other moving vehicles needs the consent of the owner of the vehicle. Hence, the preference of the citizen becomes crucial in this kind of election propaganda, not the financial resources of the candidate. Whether the candidate is rich and, therefore, can afford to dole-out more decals and stickers or poor and without the means to spread out the same number of decals and stickers is not as important as the right of the owner to freely express his choice and exercise his right of free speech. The owner can even prepare his own decals or stickers for posting on his personal property. To strike down this right and enjoin it is impermissible encroachment of his liberties.
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> The prohibition on posting of decals and stickers on "mobile" places whether public or private except in authorized areas designated by the Comelec becomes censorship which cannot be justified by the Constitution.

[17b] *Supra.*

[17c] 207 SCRA 713.

(2) Freedom from Punishment

Freedom of speech includes freedom after the speech. Without this assurance, the citizen would hesitate to speak for fear he might be provoking the vengeance of the officials he has criticized. Even as criticism is not conditioned on the consent of the government, so too is it not subject to its subsequent chastisement; otherwise, a sword of Damocles would hang over the head of the citizen and cow him into silence. In a free society, the individual is not supposed to speak in timorous whispers or with bated breath but with the clear voice of the unafraid.

Nevertheless, freedom of expression is not absolute notwithstanding that the language of the guaranty, unlike some of the provisions in the Bill of Rights, is unqualified. Like all rights, it is subject to the police power and may be properly regulated in the interest of the public. It has been held that freedom of expression does not cover ideas offensive to public order or decency or the reputation of persons, which are all entitled to protection by the State. Thus, the lewd word, the obscence word, the seditious word, the slanderous word, cannot be considered "a step to truth"[18] and therefore will not enjoy immunity from prohibition and punishment.

To determine the liability of the individual for ideas expressed by him, three major criteria have been applied, to wit: (a) the clear and present danger rule; (b) the dangerous tendency doctrine; and (c) the balancing test.

A. The Clear and Present Danger Rule

The most libertarian of these tests is the clear and present danger rule, as formulated by Justice Holmes in

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[18] Thornhill v. Alabama, 310 U.S. 88.

Schenck v. United States,[19] "The question in every case," he said, "is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that the State has a right to prevent." If they do, the speaker shall be punished; otherwise, not. "It is a question of *proximity* and *degree*" he declared. "The character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting 'Fire, fire' in a crowded theater and causing a panic." By contrast, the same word shouted with the same note of alarm but in a less flammable setting, say an open field, would create no clear and present danger and therefore no liability.

In the *Schenck Case*,[20] the accused was convicted of violation of the Espionage Act of 1917 for having caused insubordination in the armed forces of the United States and obstructing enlistment and recruitment services. These acts, it was held, had created a clear and present danger to the national security. In affirming the conviction, the U.S. Supreme Court declared: "When a nation is at war many things that might be said in times of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and no Court could regard them as protected by a constitutional right."

The rule is that the danger created must not only be clear and present but also traceable to the ideas expressed. Unless this nexus is established, the individual may not be held accountable. According to Justice Fernando, "the term *clear* seems to point to a causal connection with the danger of the substantive evil arising from the utterance questioned. *Present* refers to the time element. It used to be identified with imminent and immediate danger. The danger must not only be probable but very likely inevitable."[21]

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[19] 249 U.S. 97.

[20] *Supra.*

"What finally emerges from the 'clear and present danger' cases," said the U.S. Supreme Court, "is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished."[22]

It has been held in the United States, where liberty is more zealously guarded than here, that a person may not be punished because his language is abrasive or disputations or his views are not acceptable or even hostile to his audience. This is true even if his acts may result in public disorder.

In *Terminiello v. City of Chicago*,[23] a person was convicted under an ordinance punishing "any improper noise, riot, disturbance, breach of the peace, or diversion tending to the breach of the peace." The case arose out of an address he delivered inside an auditorium before about eight hundred persons in which he attacked various political and racial groups while an angry crowd of about one thousand gathered outside to protest the meeting and a number of disturbances occurred. In reversing the conviction, the Supreme Court, through Justice Douglas, declared:

> The vitality of civil and political institutions in our society depends on *free* discussion. As Chief Justice Hughes wrote in De Jonge v. Oregon, 299 U.S. 353, 365, 81 L. ed. 278, 284, 57 S. Ct. 255, it is only through free debate and *free* exchange of ideas that the government remains responsible to the will of the people and peaceful change is effected. The right to speak freely and to promote diversity of ideas and programs is therefore one of the chief distinctions that sets us apart from totalitarian regimes.

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[21] Gonzales v. Commission on Elections, 27 SCRA 835.

[22] *Ibid.*

[23] *Supra.*

> Accordingly, a function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech, though not absolute, is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest * * * There is no room under *our* Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislature, courts or dominant political or community groups.
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> The ordinance as construed by the trial court seriously invaded this province. It permitted conviction of petitioner if his speech stirred people to anger, invited public dispute, or brought about a condition of unrest. A conviction resting on any of those grounds may not stand.

It should be noted, however, that in *Feiner v. New York*,[24] the conviction of a person under a statute forbidding speaking on the public streets "with intent to provoke a breach of the peace" was affirmed notwithstanding that, as in *Terminiello,* the disturbance was created not by the defendant but by people who resented his remarks. The U.S. Supreme Court, by a split decision, found with the lower courts that the accused was guilty of a "genuine attempt to arouse the Negro people against the whites."

While normally not subject to injunction or punishment, since it is an accepted medium of expression, picketing may be validly prohibited and penalized when "set in a background of violence."[25] Violent picketing would create a clear and present danger to the safety of persons and the public order and is therefore not entitled to the protection of the Constitution.

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[24] 340 U.S. 315.

[25] Milk Wagon Drivers Union v. Meadowmoon Diaries, Inc., 312 U.S. 287.

It is gratifying that our own Supreme Court, after its rather disappointing record in the protection of freedom of expression during the American regime, is now maintaining the clear and present danger rule. This test was first applied in the *Primicias Case*,[26] where the respondent mayor sought to defend his refusal to allow the Nacionalista Party to hold a meeting at Plaza Miranda, by what he called "a reasonable ground to believe, basing upon previous utterances and upon the fact that passions, especially on the part of the losing groups, remain bitter and high, that similar speeches will be delivered tending to undermine the faith and confidence of the people in their government, and in the duly constituted authorities, which might threaten breaches of the peace and a disruption of public order." The Supreme Court rejected this argument, noting that the condition of Manila at that time did not justify the mayor's fears. In the course of its decision, it cited the following statement from Justice Brandeis in *Whitney v. California*:[27]

> Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech, there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one.
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> Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty.

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[26] *Supra.*

[27] 274 U.S. 357.

> Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to a society . . . The fact that speech is likely to result in some violence or in the destruction of property is not enough to justify its suppression. There must be probability of serious injury to the state.

In *Navarro v. Villegas*,[28] a different conclusion was reached although the same clear-and-present-danger rule was applied. This was also a petition for *mandamus* to compel the mayor of Manila to issue a permit to enable certain student groups to hold a public rally, again at Plaza Miranda. The mayor had also refused, claiming the same ground as his predecessor, to wit, fear of public disorder as a result of the speeches to be delivered at the intended meeting. This time, however, it was the respondent and not the petitioners who was sustained.

The Supreme Court based its decision on the difference in the factual condition of Manila in 1947, which it described as peaceful, and in 1970, at the height of student unrest and activism. Manila was then in ferment, the people were edgy and the speeches planned to be delivered at Plaza Miranda, the most sensitive place in the city, could in the view of the Court ignite the turbulence the mayor wanted to prevent.

The already celebrated case of *Reyes v. Bagatsing*,[29] deserves special mention as a worthy libertarian affirmation of the *Primicias Case*.[30]

This was a petition filed by the venerable Justice JBL Reyes on behalf of the Anti-Bases Coalition to compel the issuance of a permit for a rally to be held at the Luneta and a subsequent march to the U.S. Embassy on Roxas Boulevard. The petition was filed the day before the scheduled assembly as no action had apparently been taken on the application, although it turned out later that it had been rejected in a letter sent earlier by *ordinary* mail. Reason for the denial of the permit was the mayor's fear that the assemblage might be infiltrated by subversive elements to the prejudice of the public order; hence his suggestion that the rally be held at an enclosed place like the Rizal Coliseum for better security. In the hearing of the case the same day, it was also argued that the intended rally would violate a city ordinance implementing the provisions of the Diplomatic Convention requiring the receiving state to afford adequate protection to foreign embassies.

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[28] 31 SCRA 731.

[29] 125 SCRA 553.

[30] *Supra.*

The unanimous opinion penned by Chief Justice Fernando held that the denial of the permit was invalid as there was no showing of the probability (not mere possibility) of a clear and present danger that might arise as a result of the meeting. The burden of proving such eventuality, said Justice Teehankee in a separate concurring opinion, was on the mayor. The Chief Justice lucidly expounded on freedom of expression, relying heavily, as usual, on American authorities. He emphasized that the function of freedom of expression was to insure "a true ferment of ideas" and maintained that the right was "entitled to the utmost deference and respect;" subject only to what he called "well-defined limits." Thus: "One may not advocate disorder in the name of protest or preach rebellion under the cloak of dissent." As for the public streets, he repeated that title thereto had always been vested in the people and that the authorities could not prohibit but only regulate their proper use. The mayor's suggestion to transfer the place of the meeting from Plaza Miranda to the Sunken Gardens was sustained in the

Navarro Case,[31] but the factual situation was different in that case. As for the applicability of Ordinance No. 7295, he said that since there was no proof that the rally would be held within five hundred feet of the U.S. Embassy, the issue did not have to be passed upon. Otherwise, the Court would have to consider the view of Justices Makasiar and Plana that freedom of expression would still have to be sustained even if it contravened the said measure.

Gratifyingly, the lesson of this case was repeated in *Ruiz v. Gordon,*[32] where the Chief Justice emphasized the guidelines laid down by him in the earlier case, *viz.:*

> The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objection to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If he is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus, if so minded, they can have recourse to the proper judicial authority.

B. The Dangerous Tendency Doctrine

In *Bayan Muna v. Executive Secretary Ermita,*[32a] the Supreme Court, though Justice Azcuna, outlawed the so-called Calibrated Pre-emptive Response Policy adopted by the administration against public rallies, saying that "it has no place in our legal firmament and must be struck down as a darkness that shrouds freedom... The Calibrated Pre-emptive Response Policy, insofar as it would purport to differ from or be in lieu of maximum tolerance, is null and void and respondents are enjoined to refrain from using it and to strictly observe the requirements of maximum tolerance."

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[31] *Supra.*

[32] 126 SCRA 233.

[32a] 488 SCRA 226.

Prior to the adoption of the clear and present danger rule in this jurisdiction, the test consistently applied by the Supreme Court was the dangerous tendency doctrine. This was a highly unacceptable criterion, chosen obviously to discourage attacks against the American administration.

As explained in *Cabansag v. Fernandez,*[33] "If the words uttered create a dangerous tendency which the State has a right to prevent, then such words are punishable. It is not necessary that some definite or immediate acts of force, violence, or unlawfulness be advocated. It is sufficient that such acts be advocated in general terms. Nor is it necessary that the language used be reasonably calculated to incite persons to acts of force, violence or unlawfulness. It is sufficient if the natural tendency and probable effect of the utterance be to bring about the substantive evil which the legislative body seeks to prevent."

Under this test, a person could be punished for his ideas even if they only tended to create the evil sought to be prevented. It was not necessary to actually create the evil; a mere tendency toward the evil was enough. As a result, a number of persons were convicted for expressing views against the government even if they did not really endanger the public order; and many more, it is supposed, were daunted into a mute if resentful docility that debilitated popular freedom during that time.

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[33] 102 Phil. 152.

Thus, in *People v. Perez*,[34] the Supreme Court, in convicting the accused, declared as follows:

> In the words of the law, Perez has uttered seditious words. He has made a statement and done an act which *tended* to instigate others to cabal or meet together for unlawful purposes. He has made a statement and done an act which suggested and incited rebellious conspiracies. He has made a statement and done an act which *tended* to stir up the people against the lawful authorities. He has made a statement and done an act which *tended* to disturb the peace of the community and the safety or order of the Government. All of these various *tendencies* can be ascribed to the action of Perez and may be characterized as penalized by Section 8 of Act No. 292, as amended.

The remark complained of, made by a lowly municipal secretary in the course of a conversation at a casual meeting with another person, was: 'The Filipinos like myself must use bolos for cutting off (Governor-General) Wood's head for having recommended a bad thing for the Filipinos, for he has killed our independence." He was sentenced to jail.

The best criticism of the dangerous tendency doctrine was made by Justice Holmes in his dissenting opinion in *Gitlow v. New York*,[35] where the accused was convicted of inciting the overthrow of the U.S. Government through violence. Holmes declared:

> "It is said that this manifesto was more than a theory, that it was an incitement. Every idea is an incitement. It offers itself for beliefs, and if believed, it is acted on unless some other belief out-weighs it, or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But

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[34] 45 Phil. 599.

[35] 268 U.S. 652.

> whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration."

C. The Balance-of-Interest Test

In *American Communications Association v. Douds,*[36] the U.S. Supreme Court applied, in lieu of the clear and present danger rule, a different test to determine the validity of a statute requiring non-Communist affidavits of labor union officials. This was the balancing test, which it described as follows:

> When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of the two conflicting interests demands the greater protection under the particular circumstances presented.

Thus, if in a given situation it should appear that there is urgent necessity for protecting the national security against improvident exercise of freedom of expression, the right must yield. But if no special justification exists for curtailment of the freedom, the interests of the State not being especially threatened by its exercise, it is the right that must prevail. Authority is preferred under the dangerous tendency doctrine, liberty under the clear and present danger rule. The balancing test resolves the issue in the light of the peculiar circumstances obtaining in each particular case.

This test has not found favor with many libertarians. The flaw in this method, according to Justice Black, is that it in effect allows the courts to decide that this freedom may not be enforced unless they believe it is reasonable to do so.

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[36] 339 U.S. 282.

Criticism of Official Conduct

In the leading case of *U.S. v. Bustos,*[37] Justice Malcolm said:

> The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound may be relieved by the balm of a clear conscience. A public official must not be too thin-skinned with reference to comment upon his official acts.

Thus was laid down the liberal rule regarding criticism of official conduct in general. The official acts, and now even the private life, of a public servant are legitimate subjects of public comment. The people have a right to scrutinize and commend or condemn the conduct of their chosen representatives in the government. And as long as their comments are made in good faith and with justifiable ends, they are insulated from prosecution or damage suits for defamation even if such views are found to be inaccurate or erroneous.

These observations are applicable not only to the public officer but also to the public figure, like a candidate for public office. The public has a right to know about his qualifications, or lack of them, for the office he is seeking. "It is of the utmost consequence that the people should discuss the character and qualifications of candidates for their suffrages. The importance to the state and to society of such discussion is so vast, and the advantages derived are so great, that they more than counterbalance the inconvenience of private persons whose conduct may be involved."[38]

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[37] 37 Phil. 731.

In fact, a private individual may still be the subject of public comment even if he is not a public official or at least a public figure, as long as he is involved in a public issue. According to *Rosenbloom v. Metromedia*,[39] "If a matter is a subject of general or public interest, it cannot suddenly become less so because a private individual did not 'voluntarily' choose to become involved. The public's primary interest is in the event; the public focus is on the conduct of the participant and the content, effect and significance of the conduct, not the participant's prior anonymity or notoriety." The public issue in this case was the drive against the distribution of pornographic materials in violation of the obscenity laws, under which the petitioner had been arrested.

In *Lagunzad v. Sotto Vda. de Gonzales*,[40] however, the Supreme Court decreed a qualification. The petitioner had filmed a romanticized biography of a local official who had been murdered and become a sort of folk hero. The mother objected to the fictionalized embellishments in the movie and sought to restrain its exhibition. She was sustained in the following ruling rendered through Justice Herrera:

> Petitioner's averment that private respondent did not have any property right over the life of Moises Padilla since the latter was a public figure is neither well taken. Being a public figure does not automatically destroy *in toto* a person's right to privacy. The right to invade a person's privacy to disseminate public information does not extend to a fictional or novelized representation of a person, no matter how public a figure he or she may be. In the case at bar, while it is true that petitioner exerted efforts

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[38] Coleman v. MacLennan, 78 Kan. 11, cited in New York Times Co. v. Sullivan, 376 U.S. 254.

[39] 403 U.S. 29.

[40] 92 SCRA 476.

> to present a true-to-life story of Moises Padilla, petitioner admits that he included a little romance in the film because without it, it would be a drab story of torture and brutality.

In *Ayer Productions Pty. Ltd. v. Judge Capulong,*[40a] Juan Ponce Enrile sought to enjoin the production of a movie entitled "Four Days of Revolution," claiming that his inclusion in this film on the "people power" revolution of February 1986 would violate his right to privacy. Recalling that Enrile was one of the leaders of that historic event, the Supreme Court rejected his claim and said:

> The right of privacy of a 'public figure' is narrower than that of an ordinary citizen. Enrile has not retired into seclusion of simple private citizenship. He continues to be a 'public figure.'
>
> The line of equilibrium between the constitutional freedom of speech and of expression and the right of privacy may be marked out in terms of a requirement that the proposed motion picture must be fairly truthful and historical in its presentation of events. There must be no reckless disregard of truth in depicting the participation of Enrile in the EDSA Revolution. It must not enter into matters of essentially private concern. To the extent that the motion picture limits itself in portraying the participation of Enrile in the EDSA Revolution to those events directly related to the public facts of the EDSA Revolution, the intrusion into Enrile's privacy is not unreasonable and actionable.

Worthy of special note is the rule regarding criticism of the administration of justice. While courts have taken a lenient view toward attacks against public officials in general, it would seem they are not similarly disposed when it comes to public comment upon their own conduct. In the United States, judges have not claimed any special immunity from public criticism, regarding themselves as no different from other public officials insofar as scrutiny of their acts by the people is concerned. According to the U.S.

[40a] 160 SCRA 861.

Supreme Court in *Bridges v. California*,[41] "Where judicial officers are involved, this Court has held that concern for the dignity and reputation of the courts does not justify the punishment as criminal contempt of criticism of the judge or his decision." This view is, however, not fully shared in this jurisdiction.

The rule in the Philippines proscribes public comment on pending litigation, on the ground that it would interfere with the administration of justice. As held in *People v. Alarcon*,[42] "Newspaper publications tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending suit or proceeding constitutes criminal contempt which is summarily punishable by the courts. This rule is otherwise after the case is ended."

Why or how such comments will prejudice the administration of justice, the Court did not explain. Significantly, there are no juries in this country to shield from extraneous comment, the judge being the sole trier of questions of fact and law. Could there be here an implied admission that the judge himself might be unduly influenced by such remarks though he is supposed to be removed from popular passions or persuasions and to decide only according to his own lights?

In the case of *People v. Godoy*,[42a] the Supreme Court simply assumed the continuing validity of the Alarcon doctrine and thus affirmed the ban of silence on cases that are still *sub judice.* Justice Regalado focused on the right to criticize the courts even in the absence of litigation or its termination, agreeing with Justice Moran in his dissenting opinion in *Alarcon* that such criticism must always be couched in respectful language.

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[41] 314 U.S. 252.

[42] 69 Phil. 265.

[42a] 243 SCRA 64 (1995).

Interestingly, the severity of this rule seems to be in direct proportion to the importance of the court criticized; the higher the court, the greater the protection. Thus, in *In re Sotto*,[43] *a* senator was punished for contempt for having attacked a decision of the Supreme Court, which he called incompetent and narrow-minded, and announcing that he would file a bill for its reorganization. By contrast, the Supreme Court, in dismissing a civil action for damages of a justice of the peace for allegedly malicious administrative charges filed against him, declared that "he should not begrudge any complaint or criticism against his official actuations if that is done in the proper spirit."[44]

In the case of *In re Laureta*,[44a] a lawyer sent individual letters to the members of the division that decided a case against his client, arrogantly questioning their decision and threatening an expose if the same was not reconsidered in his favor. When reconsideration was denied, he filed charges with the Tanodbayan against the Supreme Court justices, publicizing the same through the mass media. These charges were dismissed by the Tanodbayan. The lawyer was later cited for contempt and, his explanation being unsatisfactory, suspended by the Supreme Court.

In *In re Tulfo*,[44b] a columnist derided the members of the Supreme Court as "sangkatutak na bobo" (a bunch of morons)[*] for its decision in the Checkpoints Case. While respecting his right to criticize, the Court nevertheless found him guilty of contempt for his disrespectful language that was obviously intended to ridicule the Court and insult its members. In *In re Jurado*,[44c] another columnist was disciplined by the Supreme Court for what it described as his "reckless disregard of the truth" in making certain accusations and innuendoes against some members of the Court that he could not substantiate. Chief Justice Narvasa, who wrote the extended resolution, elaborated on the limits of responsible journalism, to which Justice Puno filed a dissent based on freedom of expression.

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[43] 46 O.G. 2570.

[44] Yap v. Beltran, 53 O.G. 347.

[44a] G.R. No. 68635, March 12, 1987.

[44b] A.M. No. 90-4-1545-0, April 17, 1990.

[*] Not including Justices Cruz and Sarmiento, who dissented.

On the special inhibitions imposed on lawyers in the exercise of their freedom of expression, it was held in *Zaldivar v. Sandiganbayan*,[44d] where a member of the bar imputed charges of improper influence, corruption and other misdeeds to the members of the Supreme Court:

> Neither the right of free speech nor the right to engage in 'political' activities can be so construed or extend as to permit any such liberties to a member of the bar. A layman may, perhaps, pursue his theories of free speech or political activities until he runs afoul of the penalties of libel or slander, or into some infraction of our statutory law. A member of the bar can, and will, be stopped at the point and where he infringes our Canons of Ethics; and if he wishes to remain a member of the Bar he will conduct himself in accordance therewith.

In two other cases,[44e] the workers involved in labor disputes pending in the Supreme Court mounted a 24-hour picket along Padre Faura, pitching tents thereon and blocking traffic, and maintained a continuous harangue pleading their case. Required to show cause why they should not be punished for contempt, they extended apologies to the Court and desisted, promising they would not take similar action again.

[44c] 243 SCRA 299.

[44d] *Supra.*

[44e] Nestlé Phils. v. Sanchez, G.R. No. 75209; Kimberly v. NLRC, 154 SCRA 542.

Art and Obscenity

The trend toward realism in art and literature, coupled with the growing permissiveness of the times, has created many problems in Constitutional Law regarding the powers of the State in the enforcement of its obscenity laws. The questions raised are varied and interesting: Where does art end and indecency begin? May moving pictures be censored? When may a publication be suppressed on the ground that it is pornographic? Is nudity punishable in a free society where individualism is preferred to orthodoxy?

These questions have not posed much of a problem in the Philippines as our people are still relatively conventional and not much affected as yet by the liberalism of more sophisticated societies. Consequently, our jurisprudence on the regulation of public decency adheres to the traditional rules, without the adventure, good or bad, of innovation.

Thus, in the old case of *U.S. v. Kottinger*,[45] the defendant was accused of having offered for sale pictures of half-clad members of the non-Christian tribes. The Supreme Court acquitted him, holding that he had merely presented them in their native attire. On the other hand, in *People v. Go Pin*,[46] the accused was convicted for exhibiting nude paintings and pictures notwithstanding his claim that he had done so in the interest of art. The Supreme Court, noting that he had charged a fee for admission to his exhibition, held that his purpose was merely commercial and not artistic. There was no question, of course, that a live exhibition of sexual intercourse was, as held in *People v. Padan*,[46a] plain pornography.

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[45] 45 Phil. 352.
[46] 97 Phil. 418.

Censorship of moving pictures was challenged in *Gonzales v. Katigbak*[46b] but the decision was indecisive, to say the least. The petitioner had questioned the classification of a movie as "for adults only" by the Board of Censors. The *ponencia* of Chief Justice Fernando, which was mostly a lecture on freedom of expression, dismissed the petition "solely on the ground that there are not enough votes for a ruling that there was a grave abuse of discretion" committed by the respondent body in making such classification.

In the old American case of *Burstyn v. Wilson*,[47] it was observed that movies, compared to other media of expression, have a greater capacity for evil and are consequently subject to more regulation. In *Times Film Corp. v. City of Chicago*[48] the U.S. Supreme Court again affirmed the right of the State to censor movies, holding that the protection against previous restraint was not unlimited.

At that, the force of these decisions has already been dissipated by the statement in *Freedman v. Maryland*[49] that "the administration of a censorship system for moving pictures presents peculiar dangers to constitutionally protected speech." The statute in this case was annulled only because of procedural defects in the method of censorship, but the U.S. Supreme Court stressed that in any event "the burden of proving that the film is unprotected expression must rest on the censor."

[46a] 101 Phil. 749.

[46b] 137 SCRA 717.

[47] 343 SCRA 495.

[48] 365 U.S. 43.

[49] 380 U.S. 51.

It is axiomatic that obscenity is not constitutionally protected because it offends public decency and morals. The problem is how to define the word, a task in which the U.S. Supreme Court has encountered not a little difficulty.

Specially noteworthy is its pronouncement on this matter in *Miller v. California*,[50] where it laid down the tests of obscenity as follows:

(1) Whether the average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest.

(2) Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law.

(3) Whether the work, taken as a whole, lacks serious literary, artistic, political or scientific value.

In determining whether the material "goes substantially beyond customary limits of candor and affronts contemporary community standards of decency," the courts should not apply a national standard but the standard of the community in which the material is being tested.

Justice Douglas dissented, declaring: "Obscenity—which even we cannot define with precision—is a hodgepodge. To send men to jail for violating standards they cannot understand, construe and apply is a monstrous thing to do in a Nation dedicated to fair trials and due process. . . We deal with a highly emotional, rational question. To many the Song of Solomon is obscene. I do not think we, the judges, were ever given the constitutional power to make definitions of obscenity."

In the *Pita Case*,[50a] Justice Abraham F. Sarmiento discussed the various judicial interpretations of "obscenity" and held for the Court that determination of its meaning should be done on a case-by-case basis.

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[50] 37 L. ed. 2d 419.

[50a] *Supra.*

Assembly and Petition

The right of assembly is important to freedom of expression because public issues are better resolved after an exchange of views among citizens meeting with each other for the purpose. The public meeting is an effective forum for the ventilation of ideas affecting the common welfare. The size of these gatherings is an often dependable gauge of the people's support, or lack of it, for particular causes or candidates, and a barometer also of the political climate in general.

Like other rights embraced in freedom of expression, the right to assemble is not subject to previous restraint or censorship. Hence, it may not be conditioned upon the prior issuance of a permit or authorization from the government authorities. It should be noted, however, that if the assembly is intended to be held in a public place, a permit for the use of such place, and not for the assembly itself, may be validly required.

Primicias v. Fugoso[50b] as affirmed in the *Reyes Case*[50c] is authority for the rule that the power of the local officials in this regard is only one of *regulation* and not prohibition. This means they cannot altogether bar the use of public places for lawful assemblies; the most they can do is indicate the time and conditions for their use.

In *De la Cruz v. Ela*,[51] however, this power was expanded when the Supreme Court upheld a municipal mayor who, when asked to issue a permit for the use of a particular part of a public plaza, designated another part on the ground that the place requested might lead to disruption of the rites that might be held in a nearby church.

[50b] *Supra.*

[50c] *Supra.*

[51] 99 Phil. 346.

The *Navarro Case*[52] extended the power even further, for here the mayor was sustained when he denied the use of Plaza Miranda by the student activists, suggesting that their rally be held at the Sunken Gardens, a less sensitive area in the city.

In the aberrant case of *Tañada v. Bagatsing*,[53] the respondent mayor of Manila refused a permit for the holding of a rally at Liwasang Bonifacio and the petitioner went to the Supreme Court on *mandamus*. The Supreme Court granted the writ but changed the meeting place to Ugarte Field, a private park. Speaking for the majority, Chief Justice Fernando declared:

> There is nothing in this resolution that, for me, cannot be reconciled with the ruling in J.B.L. Reyes v. Bagatsing. Under settled jurisprudence, the clear and present danger principle does not preclude the Supreme Court from regulating the time, place and a manner of the holding of a peaceable assembly. It is the content of the speeches therein made that enjoys the widest immunity. Those voting for the transfer of the place of the rally and for a time different than that sought in the petition took into consideration the accessibility of Liwasang Bonifacio to areas that had become scenes of tumult and disorder. It is a matter of public knowledge that of late after a peaceful rally had been held in Liwasang Bonifacio, there were elements that took advantage of such occasion, especially after dark, resulting in injury to, if not loss of lives of, participants in the rally, the police, and innocent bystanders. It is of the essence of respect for constitutional rights that the rally be allowed, but it is equally this Court's duty to avoid such danger. Hence the transfer of the site and the modification as to time.

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[52] *Supra.*

[53] G.R. No. 68273, August 18, 1984.

Justice Teehankee filed a strong dissent and said:

> To grant an unnecessary permit for a rally at a private park like Ugarte Field is to deny the petition. I vote for the granting of a writ of preliminary mandatory injunction to allow the holding of the rally tomorrow, August 17, 1984, at Liwasang Bonifacio from 1:00 p.m. to 6:00 p.m. as prayed for in the petitioner's applications and petition. This is but in accordance with our guidelines in the J.B.L. Reyes case (125 SCRA 553, November 9, 1983) that the burden of showing the existence of a clear and present danger that would justify an adverse action on the application lies on the Mayor as the licensing authority. Neither in the Solicitor General's answer nor at the hearings this morning has this burden been discharged. As stated in our Resolution of October 25, 1983 in the said case. 'It is essential for the validity of a denial of a permit which amounts to a previous restraint or censorship that the licensing authority does not rely solely on his own appraisal of what public welfare, peace or safety may require. To justify such a limitation, there must be proof of such weight and sufficiency to satisfy the clear and present danger test. The possibility that subversives may infiltrate the ranks of the demonstrators is not enough.' As we further stressed in the said case, the exercise of the right of peaceable assembly is not to be abridged on the plea that it may be exercised in some other place' x x x and 'it is the duty of the city authorities to provide the proper police protection to those exercising their right to peaceable assembly and freedom of expression'. . .
>
> I can only express my dismay that this supposed landmark' doctrine has barely stood for 9 months, and its guidelines set at naught.

Justice Abad Santos agreed with him but suggested that the rally be held at the Quirino Grandstand, which was at least a public place, as a mega-rally at Liwasang Bonifacio could cause much public inconvenience. According to him:

> It is presumptuous for this Court to designate Ugarte Field as the venue for the rally. Ugarte Field is privately owned and for a rally to be held there only the consent of the owner is necessary. This Court should not assume or presume that the owner of Ug-

arte Field will yield it to the rallyists. Supposing the owner denies the use of the field, what then are the rallyists supposed to do?

Under the Public Assembly Act,[54] a permit for the holding of a public assembly shall not be necessary where the meeting is to be held in a private place, in the campus of a government-owned and operated educational institution, or in a freedom park. The freedom park is to be established in every municipality and city and shall as far as practicable be centrally located.

Where a permit is required, the written application therefor shall be filed with the mayor's office at least five days before the scheduled meeting and shall be acted upon within two days. Otherwise, the permit shall be deemed granted. Denial may be justified only upon clear and convincing evidence that the public assembly will create a clear and present danger to public order, safety, convenience, morals or health. Action on the application shall be communicated within twenty-four hours to the applicant, who may appeal the same to the appropriate court. Decision must be reached within twenty-four hours.

The law prohibits law-enforcement agencies from interfering with a lawful assembly, but permits them to detail a contingent under a responsible commander at least one hundred meters away from the assembly in case it becomes necessary to maintain order.

(1) Tests

Ideally, the test of a lawful assembly should be the purpose for which it is held, regardless of the auspices under which it is organized. This is the test applied in the United States, where it was held in *De Jonge v. Oregon.*[55]

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[54] B.P. 880.

[55] 229 U.S. 353.

> Peaceable assembly for lawful discussion cannot be made a crime. The holding of meetings for peaceable political action cannot be proscribed. Those who assist in the conduct of such meetings cannot be branded as criminals on that score. The question, if the rights of free speech and peaceful assembly are to be preserved, is not as to the auspices under which the meeting is held but as to its purpose; not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects. If the persons assembling have committed crimes elsewhere, if they have formed or are engaged in a conspiracy against the public peace and order, they may be prosecuted for their conspiracy or other violations of valid laws. But it is a different matter when the State, instead of prosecuting them for such offenses, seizes upon mere participation in a peaceable assembly and a lawful public discussion as the basis for a criminal charge.

In this country, the Supreme Court has yet to formally abrogate the ruling announced in *Evangelista v. Earnshaw*,[56] where the auspices test was applied. Here the mayor of Manila had prohibited the members of the Communist Party from holding any kind of meeting, revoking for this purpose all permits previously granted by him, particularly on the ground that the said party had been found (by the fiscal's office only!) to be an illegal association. In sustaining his act, the Supreme Court declared:

> It will be readily seen that the doctrines and principles advocated and urged in the constitution and bylaws of the Communist Party of the Philippines, the speeches uttered, delivered, and made by its members in public meetings or gatherings before, are highly seditious in that they suggest and incite rebellious conspiracies and disturb and obstruct the lawful authorities in their duties. Considering the actions of the so-called president of the Communist party, it is evident that he cannot expect that the defendant will permit the Communist Party to hold meetings or parades in the manner herein described. The respondent mayor, whose sworn duty it is to see that nothing occur which would tend to provoke or incite the people to disturb

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[56] 57 Phil. 255.

> the peace of the community or the safety or order of the Government,' did only the right thing under the circumstances, that is, cancel and withdraw, as was done, the permit previously issued by him to the said Communist Party, in accordance with the power granted to him by law. Instead of being condemned or criticized, the respondent mayor should be praised and commended for having taken a prompt, courageous, and firm stand towards the said Communist Party of the Philippines before the latter could do more damage by its revolutionary propaganda, and by the seditious speeches and utterances of its members."

It is understood, of course, that the purpose test is also applied in this jurisdiction. Even if the organizers of the meeting be unquestionably lawful, the assembly will still be illegal if its objective is, say, to incite to sedition or rebellion.

Untoward incidents arising during a public assembly will not make the assembly unlawful for that reason alone. In the old case of *U.S. v. Apurado*,[57] about five hundred citizens in a town, some of them carrying canes, milled in front of the municipal building and a large number of them crowded into the council chamber to demand the removal of certain local officials. In acquitting the defendants of the charge of sedition, the Supreme Court said:

> It is rather to be expected that more or less disorder will mark the public assembly of the people to protest against grievances whether real or imaginary, because on such occasions feeling is always brought to a high pitch of excitement, and the greater the grievance and the more intense the feeling, the less perfect, as a rule, will be the disciplinary control of the leaders over their irresponsible followers. But if the prosecution be permitted to seize upon every instance of such disorderly conduct by individual members of a crowd as an excuse to characterize the assembly as a seditious and tumultuous rising against the authorities, then the right to assemble and to petition for redress of grievances would become a delusion and a snare and the at-

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[57] 7 Phil. 422.

> tempt to exercise it on the most righteous occasion and in the most peaceable manner would expose all those who took part therein to the severest and most unmerited punishment, if the purposes which they sought to attain did not happen to be pleasing to the prosecuting authorities. If instances of disorderly conduct occur on such occasions, the guilty individuals should be sought out and punished therefor, but the utmost discretion must be exercised in drawing the line between disorderly and seditious conduct and between an essentially peaceable assembly and a tumultuous uprising.

The rights to free assembly and free speech were bolstered in the case of *Malabanan v. Ramento,*[58] where several student leaders were suspended for one year when they held a demonstration in the premises of a university outside the area permitted by the school authorities which disrupted classes and disturbed the work of the administrative personnel. The Supreme Court issued a temporary restraining order that in effect permitted the students to re-enroll and finish their studies. Although the case thereby became moot and academic, the Court nevertheless decided to rule on the merits of the constitutional issues raised and held that the penalty imposed was out of proportion to the petitioners' misdeed. Quoting Justice Fortas, the decision emphasized that the students did not "shed their constitutional rights to freedom of speech or expression at the schoolhouse gate," although these rights were not unlimited.

On the language used by the student leaders in their speeches, the Court observed:

> If in the course of such demonstration, with an enthusiastic audience goading them on, utterances, extremely critical, at times even vitriolic, were let loose, that is quite understandable. Student leaders are hardly the timid, diffident types. They are likely to be assertive and dogmatic. They would be ineffective if during a rally

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[58] 129 SCRA 359.

> they speak in the guarded and judicious language of the academe. At any rate, even a sympathetic audience is not disposed to accord full credence to their fiery exhortations. They take into account the excitement of the occasion, the propensity of speakers to exaggerate, the exuberance of youth. They may give the speakers the benefit of their applause, but with the activity taking place in the school premises and during the daytime no clear and present danger of public disorder is discernible. This is without prejudice to the taking of disciplinary action for conduct, which, to borrow from Tinker, 'materially disrupts classwork or involves substantial disorder or invasion of the right of others.'

The *Malabanan* ruling was affirmed in *Villar v. Technological Institute of the Philippines*,[59] where several students were barred from re-enrollment because they had participated in demonstrations in the exercise of their freedom of expression. However, relief was denied some of the petitioners who could be validly excluded on the basis of their academic deficiencies for, as the Court put it, "the academic freedom enjoyed by institutions of higher learning includes the right to set academic standards to determine under what circumstances failing grades suffice for the expulsion of students."

> Once it has done so, however, the standard should be followed meticulously. It cannot be utilized to discriminate against those students who exercise their constitutional right to peaceable assembly and free speech. If it does so, then there is legitimate grievance for the students thus prejudiced, their right to the equal protection clause being disregarded.

Similar views were expressed in the subsequent case of *Non v. Dames*.[59a]

In *Aquino v. Bagatsing*,[60] the Supreme Court allowed the petitioners to march from several points in Metro Manila and converge at the Luneta Grandstand for the purpose of holding a rally to commemorate the assassination of Benigno S. Aquino, Jr. The Court held the petitioners to their assurance that the march and rally would be peaceful and also directed the law-enforcement officers assigned to police the demonstration to be in proper uniform with clearly exposed identification tags and to observe a discreet distance from the demonstrators. Postscript: Nothing untoward happened during the demonstration despite the respondents' unwillingness to permit it because of his apprehensions of violence.

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[59] 135 SCRA 706.

[59a] 185 SCRA 523.

[60] G.R. No. 68318, August 18, 1984.

In *PBM Employees Association v. PBM*,[61] the petitioner planned a demonstration at Malacañang to protest certain alleged abuses committed by the Pasig police. To prevent disruption of work, the respondent requested the exclusion of the workers in the first shift, when the demonstration was to be held, but this request was rejected as all the employees wanted to participate. The rally was held as planned, and thereafter the respondent sought the dismissal of the leaders of the labor union for violation of the collective bargaining agreement. The Supreme Court sustained the workers, holding through Justice Makasiar as follows:

> In seeking sanctuary behind their freedom of expression as well as their right of assembly and of petition against alleged persecution of local officialdom, the employees and laborers of herein private respondent firm were fighting for their very survival, utilizing only the weapons afforded them by the Constitution—the untrammelled enjoyment of their basic human rights. The pretension of their employer that it would suffer loss or damage by reason of the absence of its employees from 6 o'clock in the morning to 2 o'clock in the afternoon, is a plea for the preservation merely of their property rights. Such apprehended loss or damage would not spell the difference between the life and death of the firm or its

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[61] 51 SCRA 189.

> owners or its management. The employees' pathetic situation was a stark reality—abused, harassed and persecuted as they believed they were by the peace officers of the municipality. As above intimated, the condition in which the employees found themselves vis-a-vis the local police of Pasig, was a matter that vitally affected their right to individual existence as well as that of their families. Material loss can be repaired or adequately compensated. The debasement of the human being—broken in morale and brutalized in spirit—can never be fully evaluated in monetary terms. The wounds fester and the scars remain to humiliate him to his dying day, even as he cries in anguish for retribution, denial of which is like rubbing salt on bruised tissues.

Right of Association

The right of association is especially meaningful in a free society because man is by nature gregarious. His disposition to mix with others of the same persuasions, interests or objectives is guaranteed by Article III, Section 8, providing that:

> The right of the people, including those employed in the public and private sectors, to form unions, associations or societies for purposes not contrary to law shall not be abridged.

Strictly speaking, the right of association is already comprehended in due process, particularly as it protects the person's liberty. It was nevertheless deemed advisable to provide for this separate section by way of emphasis upon this specific right.

Societies may be formed under this provision for social, scientific, cultural, political, religious or other lawful purposes. The right of association is deemed embraced in freedom of expression because the organization can be used as a vehicle for the expression of views that have a bearing on the public welfare. These views would be more effectively disseminated and enjoy a more respectful audience if articulated through an organization to which a person belongs than if he were to ventilate them as a mere individual.

The phrase *"for purposes not contrary to law"* is a built-in limitation of the right. Actually, though, this expressed restriction is not necessary at all because it is understood that all rights are subject to the inherent police power.

The legislature may not, of course, arbitrarily declare any purpose as unlawful even if it is not inimical to the public. For example, it may not prohibit advocacy of the lowering of taxes as this is a subject of common interest that may be properly discussed under the freedom of expression clause. Individuals may group themselves in supporting divorce, and such purpose may not be declared contrary to law by the legislative.

Significantly, the new Section 8 now expressly guarantees to those employed in the public and private sectors the right to form unions. This general provision is fortified by Article IX-B, Section 2(5) which affirms that *"the right to self-organization shall not be denied to government employees."* In an obiter in *Alliance of Government Workers v. Ministry of Labor and Employment,*[61a] the Supreme Court said that members of the civil service may not declare a strike to enforce their economic demands. This view has been categorically affirmed in *SSS Employees Association v. Court of Appeals,*[61b] where the following pronouncement was made:

> The 1987 Constitution, in the Article on Social Justice and Human Rights, provides that the State "shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law" [Art. XIII, Sec. 3].

[61a] 124 SCRA 1.

[61b] 175 SCRA 686.

> By itself, this provision would seem to recognize the right of all workers and employees, including those in the public sector, to strike. But the Constitution itself fails to expressly confirm this impression, for in the Sub-Article on the Civil Service Commission, it provides, after defining the scope of the civil service as "all branches, subdivisions, instrumentalities, and agencies of the Government, including government-owned or controlled corporations with original charters," that "[t]he right to self-organization shall not be denied to government employees" [Art. IX(B), Sec. 2(1) and (50)]. Parenthetically, the Bill of Rights also provides that "[t]he right of the people, including those employed in the public and private sectors, to form unions, associations, or societies for purposes not contrary to law shall not be abridged [Art. III, Sec. 8]. Thus, while there is no question that the Constitution recognizes the right of government employees to organize, it is silent as to whether such recognition also includes the right to strike.
>
> Resort to the intent of the framers of the organic law becomes helpful in understanding the meaning of these provisions. A reading of the proceedings of the Constitutional Commission that drafted the 1987 Constitution would show that in recognizing the right of government employees to organize, the commissioners intended to limit the right to the formation of unions or associations only, without including the right to strike.

In the leading case of *People v. Ferrer*,[62] one of the arguments raised against the Anti-Subversion Act was that it impaired the right of association. The Supreme Court did not agree, holding that the purpose of the statute was to outlaw only those organizations aimed at the violent overthrow of the government. "That the Government has a right to protect itself against subversion is a proposition too plain to require elaboration," it declared. "Self-preservation is the 'ultimate value' of society. It surpasses and transcends every other value for if a society cannot protect its very structure from armed internal attack . . . no subordinate value can be protected."

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[62] 48 SCRA 382.

In *Victoriano v. Elizalde Rope Workers' Union,*[63] the Supreme Court sustained a provision in the old Industrial Peace Act allowing laborers to dissociate from or not join a labor union despite its closed-shop agreement with management if they were "members of any religious sect which prohibits affiliation of their members in any such 'labor organization.' " It was here held that the right to associate included the right not to associate and that this particular exemption was intended for the benefit of laborers who were inhibited from joining labor unions because of their religious beliefs. As Justice Zaldivar put it:

> To that all-embracing coverage of the closed-shop arrangement, Republic Act No. 3350 introduced an exception, when it added to Section 4(a)(4) of the Industrial Peace Act the following proviso: but such agreement shall not cover members of any religious sects which prohibit affiliation of their members in any such labor organization.' Republic Act No. 3350 merely excludes *ipso jure* from the application and coverage of the closed-shop agreement the employees belonging to any religious sects which prohibit affiliation of their members with any labor organization. What the exception provides, therefore, is that members of said religious sects cannot be compelled or coerced to join labor unions even when said unions have closed-shop agreements with the employers; that in spite of any closed-shop agreement, members of said religious sects cannot be refused employment or dismissed from their jobs on the sole ground that they are not members of the collective bargaining union. It is clear, therefore, that the assailed Act, far from infringing the constitutional provision on freedom of association, upholds and reinforces it. It does not prohibit the members of said religious sects from affiliating with labor unions. It still leaves to said members the liberty and the power to affiliate, or not to affiliate, with labor unions. If, notwithstanding their religious beliefs, the members of said religious sects prefer to sign up with the labor union, they can do so. If in deference and fealty to their religious faith, they refuse to sign up, they can do so; the law does not coerce them to join, neither does the law prohibit them from joining, and neither may the employer or labor union

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[63] 59 SCRA 54.

> compel them to join. Republic Act No. 3350, therefore, does not violate the constitutional provision on freedom of association.

The closed-shop is, of course, a valid form of union security and a provision therefor in a collective bargaining agreement is not considered a restriction of the right of association.[64] As the Supreme Court held in *Liberty Flour Mills Employees Association v. Liberty Flour Mills, Inc.*:[64a]

> It is the policy of the State to promote unionism to enable the workers to negotiate with management on the same level and with more persuasiveness than if they were to individually and independently bargain for the improvement of their respective conditions. To this end, the Constitution guarantees to them the rights "to self-organization, collective bargaining and negotiations and peaceful concerted actions including the right to strike in accordance with law." There is no question that these purposes could be thwarted if every worker were to choose to go his own separate way instead of joining his co-employees in planning collective action and presenting a united front when they sit down to bargain with their employers. It is for this reason that the law has sanctioned stipulations for the union shop and the closed shop as a means of encouraging the workers to join and support the labor union of their own choice as their representative in the negotiation of their demands and the protection of their interests *vis-a-vis* the employer.

The right of association was also held not violated where political parties were prohibited from participating in the barangay elections to insure the non-partisanship of the candidates. The Supreme Court declared in *Occeña v. Commission on Elections*[65] that political neutrality was needed for the discharge of the duties of barangay officials.

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[64] Villar v. Inciong, 121 SCRA 444; Lirag Textile Mills v. Blanco, 109 SCRA 87.

[64a] 180 SCRA 668.

[65] 127 SCRA 404.

In *In re Edillon,*[66] a lawyer sought to be disbarred for "stubborn refusal to pay his membership dues" to the Integrated Bar of the Philippines argued *inter alia* on the strength of his freedom of association which he said included the right not to join any association. On this point, the Supreme Court had the following to say:

> The first objection posed by the respondent is that the Court is without power to compel him to become a member of the Integrated Bar of the Philippines, hence, Section 1 of the Court Rule is unconstitutional for it impinges on his constitutional right of freedom to associate (and not to associate). Our answer is: To compel a lawyer to be a member of the Integrated Bar is not violative of his constitutional freedom to associate.
>
> Integration does not make a lawyer a member of any group of which he is not already a member. He became a member of the Bar when he passed the Bar examinations. All that integration actually does is to provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is already a member.
>
> Bar integration does not compel the lawyer to associate with anyone. He is free to attend or not attend the meetings of his Integrated Bar Chapter or vote or refuse to vote in its elections as he chooses. The only compulsion to which he is subjected is the payment of annual dues. The Supreme Court, in order to further the State's legitimate interest in elevating the quality of professional legal services, may require that the cost of improving the profession in this fashion be shared by the subjects and beneficiaries of the regulatory program—the lawyers.
>
> Assuming that the questioned provision does in a sense compel a lawyer to be a member of the Integrated Bar, such compulsion is justified as an exercise of the police power of the State. But may the Supreme Court experience the police power.

But may the Supreme Court exercise the police power?

It has been held in the United States that a legitimate organization like the National Association for the Advancement of Colored Peoples may not be compelled to reveal its list of members, as this may result in reprisals against them from those opposed to their purposes.[67] However, a similar requirement may be validly imposed upon the Ku Klux Klan, a racist organization espousing "white supremacy" and committed to the prosecution of Negros.[68]

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[66] 84 SCRA 554.

Access to Information

When in *Subido v. Ozaeta,*[69] the petitioner sought to compel the register of deeds to permit examination of his record relating to sales of private lands to aliens, the Supreme Court, while granting the petition on statutory grounds, made the dubious comment that "the refusal by the respondents does not constitute a restriction upon or censorship of publication. It only affects facilities of publication, and the respondents are correct in saying that freedom of information or freedom to obtain information for publication is not guaranteed by the Constitution."

That was a rather strange statement, for there is no question that access to information on matters of public concern is essential to the proper exercise of freedom of expression on such matters. So said Justice Briones in his dissenting opinion. The citizen obviously has a right to know what is going on in the country and in his government so he can express his views thereon knowledgeably and intelligently. One cannot question the extravagance of the government, for example, if he is denied examination of official vouchers. A citizen may not expose anomaly if those responsible for it may validly prevent him from investigating their activities. In the interest of truth and fairness, the citizen should not be made to guess only at what is being done by public functionaries and to base his views and conclusions on mere rumors, half-truths, conjectures and even canards.

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[67] NAACP v. Alabama, 357 U.S. 449.

[68] Bouyant v. Zimmerman, 278 U.S. 63.

[69] 80 Phil. 383.

To affirm his right, the Constitution now wisely provides in Article III, Section 7:

> The right of the people to information on matters of public concern shall be recognized. Access to official records, and to documents and papers pertaining to official acts, transactions, or decisions, as well as to government research data used as basis for policy development, shall be afforded the citizen subject to such limitations as may be provided by law.

The above-quoted provision should be related to Article VI, Section 16(4) requiring publication of the legislative journals from time to time excepting such parts as may, in the judgment of the House, affect national security, and Section 20, providing that "*the records and books of accounts of the Congress shall be open to the public in accordance with law, and such books shall be audited by the Commission on Audit which shall publish annually an itemized list of amounts paid and expenses incurred for each Member.*"

In *Baldoza v. Dimaano,*[70] the right of a municipal mayor to examine judicial records was sustained on the basis of the above provision. The petitioner had questioned the judge's authority to control and regulate such examination. The Supreme Court held that the rules and conditions imposed by the respondent were not unreasonable. It added, however, that such authority did not include the power to prohibit such examination. Quoting from the *Subido Case,* the Court said that "except perhaps when it is clear that the purpose of the examination is unlawful or sheer, idle curiosity, we do not believe it is the duty under the law of registration officers to concern themselves with the motives, reasons, and objects of the persons seeking access to the records." It declared further:

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[70] 71 SCRA 14.

> The New Constitution now expressly recognizes that the people are entitled to information on matters of public concern and thus are expressly granted access to official records, as well as documents of official acts, or transactions, or decisions, subject to such limitations imposed by law. The incorporation of this right in the Constitution is a recognition of the fundamental role of free ex-change of information in a democracy. There can be no realistic perception by the public of the nation's problems, nor a meaningful democratic decision-making if they are denied access to information of general interest. Information is needed to enable the members of society to cope with the exigencies of the times. As has been aptly observed: 'Maintaining the flow of such information depends on protection for both its acquisition and its dissemination since, if either process is interrupted, the flow inevitably ceases.' However, restrictions on access to certain records may be imposed by law. Thus, access restrictions imposed to control insurrection have been permitted upon a showing of immediate and impending danger that renders ordinary means of control inadequate to maintain order.

In *Legaspi v. Civil Service Commission*,[71] the Supreme Court affirmed the right of the petitioner to secure from the Commission on Civil Service information regarding the civil service eligibility of certain persons employed in the health department of the Cebu City government. Elaborating on this right, Justice Cortes declared:

> In both the *Subido* and *Baldoza* cases, we were emphatic in Our statement that the authority to regulate the manner of examining public records does not carry with it the power to prohibit. A distinction has to be made between the discretion to refuse outright the disclosure of or access to a particular information and the authority to regulate the manner in which the access is to be afforded. The first is the limitation upon the availability of access to the information sought, which only the Legislature may impose (Art. III, Sec. 6, 1987 Constitution). The

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[71] 150 SCRA 530 (1987).

> second pertains to the government agency charged with the custody of public records. Its authority to regulate access is to be exercised solely to the end that damage to, or loss of, public records may be avoided, undue interference with the duties of said agencies may be prevented, and more importantly, that the exercise of the same constitutional right by the other persons shall be assured (Subido v. Ozaeta, *supra*).
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> Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. The constitutional duty, not being discretionary, its performance may be compelled by a writ of Mandamus in a proper case.

And in *Valmonte v. Belmonte*,[71a] the same *ponente* wrote for a unanimous Supreme Court:

> The information sought by petitioners in this case is the truth of reports that certain Members of the Batasang Pambansa belonging to the opposition were able to secure 'clean' loans from the GSIS immediately before the February 7, 1986 election through the intercession of the former First Lady, Mrs. Imelda R. Marcos.
>
> The GSIS is a trustee of contributions from the government and its employees and the administrator of various insurance programs for the benefit of the latter. Undeniably, its funds assume a public character. More particularly, Sec. 5(b) and 46 of P.D. 1146, as amended (the Revised Government Service Insurance Act of 1977), provide for annual appropriations to pay the contributions, premiums, interest and other amounts payable to the GSIS by the government, as employer, as well as the obligations which the Republic of the Philippines assumes or guarantee to pay. Considering the nature of its funds, the GSIS is expected to manage its resources with the utmost prudence and in strict compliance with the pertinent laws or rules and regula-

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[71a] 170 SCRA 256.

> tions. Thus, one of the reasons that prompted the revision of the old GSIS law (C.A. No. 186, as amended) was the necessity to preserve at all times the actuarial solvency of the funds administered by the System' [second whereas Clause, P.D. No. 1146.] Consequently, as respondent himself admits, the GSIS 'is not supposed to grant clean loans' [Comment, p. 8]. It is therefore the legitimate concern of the public to ensure that these funds are managed properly with the end in the view of maximizing the benefits that accrue to the insured government employees. Moreover, the supposed borrowers were Members of the defunct Batasang Pambansa who themselves appropriated funds for the GSIS and were therefore expected to be the first to see to it that the GSIS performed its tasks with the greatest degree of fidelity and that all its transactions were above board.
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> In sum, the public nature of the loanable funds of the GSIS and the public office held by the alleged borrowers make the information sought clearly a matter of public interest and concern.

In *Chavez v. PCGG*,[71b] a former solicitor general demanded the right to be informed of the negotiations between the government and the Marcoses regarding the disposition of their alleged ill-gotten wealth. The respondent had opposed the move mainly on the ground that no final agreement had as yet been reached and the proposed terms and conditions had not yet become effective and binding. The Court directed the disclosure of the information sought but noted that the right to information was subject to certain recognized restrictions, among them: 1) national security matters and intelligence information; 2) trade secrets and banking transactions; 3) criminal matters; and 4) other confidential information.

A divided Supreme Court, however, denied the request of the *Kapisanan ng mga Brodkasters sa Pilipinas*[71c] for the radio-TV coverage of the Estrada trial at the Sandiganbayan, the majority holding that it might, intentionally or not, unduly influence the decision of the case, as against the minority view invoking the people's right to information on such a vital matter. Justice Vitug was joined by 7 of his colleagues, with the Chief Justice and 4 others dissenting with Justice Puno. (Interestingly, both sides relied heavily on American jurisprudence instead of thinking for themselves in light of our own perceptions and conditions.)

[71b] 299 SCRA 744.

[71c] 360 SCRA 744.

In *Senate v. Executive Secretary Ermita,*[71d] where EO 464 was questioned for providing *inter alia* that "all heads of departments of the Executive Branch of the Government shall secure the consent of the President prior to appearing before either House of Congress," the Supreme Court held through Justice Carpio-Morales.

> To the extent that legislative investigations are generally held in public ... any executive issuance tending to unduly limit disclosure of any information in such investigation necessarily deprives the people of information which they can use in formulating their own opinion on information which, being presumed to be in aid of legislation, is presumed to be a matter of public concern. The citizens are thereby denied access to information which they can use for formulating their own opinions on the matter before Congress—opinions which they can communicate to their representatives and other government officials through the various legal means allowed by their freedom of information...
>
> The impairment of the right of the people to information as a consequence of EO 454, is therefore, in the sense explained above, just as direct as its violation of the legislative power of inquiry.
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> * * *
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> Executive privilege, whether asserted against Congress, the courts, or the public, is recognized only in relation to certain types of information of a sensitive character. The extraordinary character of the exemption indicates that the presumption inclines heavily against executive secrecy and in favor of disclosure.

[71d] 488 SCRA 1.

This well-received limitation of executive privilege was not applied in the subsequent case of *Neri v. Senate,*[72] where the petitioner invoked President Arroyo's executive privilege for refusing to answer questions in a Senate investigation of his conversations with her regarding a government contract with a Chinese corporation involving hundreds of millions of dollars. While applying the *Ermita Case* but not its ruling, the new decision sustained by 10 but one of President Arroyo's appointees and dissented by 5 of her other appointees, the Court held in *Neri* that he was right in invoking the President's executive privilege as covering diplomatic and national security matters that could not be revealed through the exercise of the coercive legislative or judicial power of contempt.

The malodorous transaction was subsequently canceled by President Arroyo, but continues to blemish and scandalize her administration. The motion for reconsideration of *Neri v. Senate* was denied by the same expected vote and will remain part of the law of the land until it is, hopefully, rejected and trashed with the disgraceful decisions of the Supreme Court during martial law like *Javellana v. Executive Secretary*[73] and *Garcia-Padilla v. Enrile.*[74]

In the *Echegaray Case,*[75] the Supreme Court held that making the Lethal Injection Manual inaccessible to the convict was unconstitutional and saw no reason why he could not obtain a copy should he so desire. It declared that the contents of the manual were matters of public concern "which the public may want to know either because these directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen."

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[72] 549 SCRA 77 (2008).

[73] 50 SCRA 33 (1973).

[74] 121 SCRA 472 (1983).

[75] *Infra.*

The second reason may be overly generous. May an ordinary citizen demand the opening to him of the files of a government office simply because they arouse his interest?

Finally, in the resolution of the motion for reconsideration of *Tañada v. Tuvera,*[76] where the Court ordered the publication of all laws and other measures having the force and effect of law, the Supreme Court said through Justice Cruz:

> Laws must come out in the open in the clear light of the sun instead of skulking in the shadows with their dark, deep secrets. Mysterious pronouncements and rumored rules cannot be recognized as binding unless their existence and contents are confirmed by a valid publication intended to make full disclosure and give proper notice to the people. The furtive law is like a scabbarded saber that cannot feint, parry or cut unless the naked blade is drawn.

Conformably to the suggestion made in that case and in view of the erratic issuances and limited readership of the Official Gazette, it is now provided that the required publication may be made alternatively in a newspaper of general circulation in the Philippines.[77]

Suggested Reading:

Terminiello v. City of Chicago, 337 U.S. 1
Abrams v. U.S., 250 U.S. 610
New York Times v. U.S., 403 U.S. 713
Primicias v. Fugoso, 80 Phil. 71

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[76] 146 SCRA 446.

[77] Ex. Order 200.

Schenck v. U.S., 249 U.S. 97

Navarro v. Villegas, 31 SCRA 731

Reyes v. Bagatsing, 125 SCRA 553

U.S. v. Bustos, 37 Phil. 731

Rosenbloom v. Metromedia, 403 U.S. 29

Miller v. California, 37 L. ed. 2nd 419

PBM Employees Association v. PBM, 51 SCRA 189

NAACPA v. Alabama, 357 U.S. 449

In re Edillon, 84 SCRA 554

Tañada v. Tuvera, 146 SCRA 446

Non v. Dames, 185 SCRA 523

National Press Club v. Commission on Elections, 207 SCRA 1

Iglesia ni Cristo v. Court of Appeals, 259 SCRA 529

Senate v. Ermita, 488 SCRA 1

Bayan Muna v. Ermita, 487 SCRA 623

David v. Arroyo, 489 SCRA 160

Chapter 14

THE IMPAIRMENT CLAUSE

"No law impairing the obligation of contracts shall be passed."[1]

THE PURPOSE of the impairment clause is to safeguard the integrity of valid contractual agreements against unwarranted interference by the State. As a rule, they should be respected by the legislature and not tampered with by subsequent laws that will change the intention of the parties or modify their rights and obligations. The will of the obligor and the obligee must be observed; the obligation of their contract must not be impaired.

It should be stressed at the outset, however, that the protection of the impairment clause is not absolute. There are instances, as will appear later, when contracts valid at the time of their conclusion may become invalid, or some of their provisions may be rendered inoperative or illegal, by virtue of supervening legislation.

Contract

The term "contract" as used in the impairment clause refers to any lawful agreement on property or property rights, whether real or personal, tangible or intangible. The agreement may be executed or executory. The parties may be private persons only, natural or artificial, or private persons on the one hand and the government or its agencies on the other hand. It includes franchises or char-

Contract: what and by who

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[1] Art. III, Sec. 10, Constitution.

ters granted to private persons or entities, like an authorization to operate a public utility.[2]

But it does not cover licenses,[3] say for operation of a liquor store or a cockpit, as these involve grants of privileges only that are essentially revocable. Neither does it include the marriage contract, which, more than a mere agreement between the spouses, is regarded as a social institution subject at all times to regulation by the legislature and to change of the original conditions.[4] Thus, a subsequent law allowing divorce would be applicable to marriages previously solemnized under a law prohibiting their dissolution.

Lisence and marriage

Also, as earlier observed, a public office is not a property right and therefore cannot be the subject of a contract between the incumbent and the government. The office itself, if created by statute, may be modified or even abolished or any of its incidents may be changed, as by reduction of the term or the salary. The exception already noted is where the salary has already been earned, in which case it will be deemed a vested property right that cannot be withdrawn or reduced by retroactive legislation.[5]

And public office

Law

As used in the impairment clause, "law" includes statutes enacted by the national legislature, executive orders and administrative regulations promulgated under a valid delegation of power, and municipal ordinances passed by the local legislative bodies.[6] However, it does not include judicial decisions or adjudications made by administrative bodies in the exercise of their quasi-judicial powers.

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[2] Dartmouth College v. Woodward, 4 Wheat. 518.

[3] Pedro v. Prov. Board of Rizal, 53 Phil. 123; according to *Tan v. Director of Forestry,* 125 SCRA 302, "a license is merely a permit or privilege to do what otherwise would be unlawful and is not a contract with the government."

[4] Maryland v. Hill, 125 U.S. 129.

[5] Mississippi v. Miller, 276 U.S. 174.

To impair, the law must retroact so as to affect existing contracts concluded *before* its enactment. There will be no impairment if the law is made to operate prospectively only, to cover contracts entered into *after* its enactment.

Law must retroact

Obligation

The "obligation" of the contract is the *vinculum juris*, *i.e.*, the tie that binds the parties to each other. "The obligation of a contract is the law or duty which binds the parties to perform their undertaking or agreement according to its terms and intent."[7] In a contract of loan, for example, the obligation is the duty of the lender to extend the loan and of the borrower to repay it, according to their stipulations.

Impairment

Impairment is anything that diminishes the efficacy of the contract.[8] In the above example of the contract of loan, there will be an impairment of its obligation if by subsequent law the principal of the loan is reduced or increased, or the period of payment is shortened or lengthened, or conditions are added or removed, or the remedies for the enforcement of the rights of the parties are completely withdrawn. The degree of the diminution is immaterial. As long as the original rights of either of the parties are changed to his prejudice, there is an impairment of the obligation of the contract.

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[6] Lim v. Register of Deeds, 46 O.G. 3665.
[7] Sturgess v. Crownshields, 4 Wheat. 122.
[8] Clements v. Nolting, 42 Phil. 702.

Impairment of remedies

But in the case of remedies, there will be impairment only if all of them are withdrawn, with the result that either of the parties will be unable to enforce his rights under the original agreement. There will be no impairment, in other words, as long as a substantial and efficacious remedy remains. And this rule holds true even if the remedy retained is the most difficult to employ and it is the easier ones that are withdrawn.[9]

Is this the " equitably reduced -- unconscionable'

Limitations

Later law may invalidate

Despite the impairment clause, a contract valid at the time of its execution may be legally modified or even completely invalidated by a subsequent law. If the law is a proper exercise of the police power, it will prevail over the contract.

Into each contract are read the provisions of existing law and, always, a reservation of the police power as long as the agreement deals with a matter affecting the public welfare. Such a contract, it has been held, suffers a congenital infirmity, and this is its susceptibility to change by the legislature as a postulate of the legal order.[10] The legislature cannot bargain away the police power through the medium of a contract. Neither may private parties fetter the legislative authority by contracting on matters that are essentially within the power of the lawmaking body to regulate.

Cannot bargain PP

Thus, in the case of *Stone v. Mississippi*,[11] cited earlier, a franchise granted by the government in exchange for valuable consideration, for the operation of a lottery by a private corporation, was in effect revoked when the legislature subsequently imposed a prohibition on all kinds of gambling within the state. The measure was sustained although the term of the franchise had not yet expired.

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[9] Manila Trading Co. v. Reyes, 62 Phil. 461.

[10] Home Bldg. and Loan Assn. v. Blaisdell, 290 U.S. 398.

[11] *Supra.*

Pay in gold -- nope pay in silver

In the famous *Gold Clause Cases,*[12] the creditors in many contracts of loan, anticipating a change in the legal tender from gold to silver, stipulated with the borrowers that their loans would be repaid in gold currency even if the conversion did take place. As expected, the United States ultimately converted to the silver standard, the law providing for the discharge of existing money obligations through payment in the new legal tender dollar for dollar. The creditors objected, claiming an impairment of the obligation of their contracts. The U.S. Supreme Court sustained the law, holding that the subject of the contract being currency, which was within the exclusive power of the legislature to control, the agreement was subject to modification by the State in the exercise of the police power.

8 year extension

In the leading case of *Rutter v. Esteban,*[13] the Philippine government declared, first by executive order of the President and later by congressional enactment, a moratorium on the payment of pre-war debts until after eight years from the settlement of the war damage claims of the debtors. The law was annulled by the Supreme Court as violative of the impairment clause. The Court declared that, to begin with, the emergency caused by the war that earlier had justified the moratorium was no longer existing. Secondly, the period was oppressively long, extending over a period of four years, when the executive order was in force, and another eight years as provided under the law, during which the creditor could not enforce his claim. Finally, during the moratorium, all the rights of the creditors were suspended, including the right to collect interest on the principal of the loan as long as it remained unpaid. The Court noted that in the United States, the usual period of moratorium did not extend beyond two years and during this period all the rights of the creditor, except only the right to collect the principal of the loan, were continued in force.

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[12] Norman v. Baltimore, 294 U.S. 240.

[13] 93 Phil. 68.

Convert share tenancy

In *Ilusorio v. Court of Agrarian Relations,*[14] the issue was whether a pre-existing share tenancy contract could be validly converted by the tenants into leasehold tenancy in accordance with the provisions of a subsequent law. The Supreme Court held this was allowed because—

> The prohibition contained in constitutional provisions against impairing the obligation of contracts is not an absolute one and is not to be read with literal exactness like a mathematical formula. Such provisions are restricted to contracts with respect to property, or some object of value, and confer rights which may be asserted in a court of justice, and have no application to statutes relating to public subjects within the domain of the general legislative powers of the State, and involving the public right and public welfare of the entire community affected by it. They do not prevent proper exercise by the State of its police powers. By enacting regulations reasonably necessary to secure the health, safety, morals, comfort, or general welfare of the community, even the contracts may thereby be affected; for such matter cannot be placed by contract beyond the power of the State to regulate and control them. (Ongsiako vs. Gamboa, et al., 86 Phil. 50.)

In *Ortigas & Co. v. Feati Bank,*[15] two lots sold by the petitioners on condition that they were to be used only for residential purposes were subsequently acquired by the respondent, which started erection of a commercial building

Residential only -- built commercial

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[14] 17 SCRA 25.

[15] 94 SCRA 533.

thereon. The petitioner sought to restrain such construction on the strength of the stipulated condition but the respondent invoked a resolution adopted by the municipal council of Mandaluyong declaring the area in which the lots were located a commercial and industrial zone. The Supreme Court upheld the respondent, ruling that the zoning resolution had been adopted in the exercise of the police power, which was superior to the impairment clause and so could modify the provisions of the contract of sale.

Rejecting the challenge to BP No. 22 on the ground that it contravened the impairment clause, the Supreme Court said in the *Lozano Case*:[15a]

> We find no valid ground to sustain the contention that BP 22 impairs freedom of contract. The freedom of contract which is constitutionally protected is freedom to enter into lawful' contracts. Contracts which contravene public policy are not lawful. Besides, we must bear in mind that checks can not be categorized as mere contracts. It is a commercial instrument which, in this modern day and age, has become a convenient substitute for money; it forms part of the banking system and therefore not entirely free from the regulatory power of the state.

In *Tiro v. Hontanosas,*[16] the Supreme Court declared that a government directive which in effect discontinued the assignment of the salaries of public school teachers to their creditor was not offensive to the impairment clause because the latter could still collect its loans after the salaries had been drawn by the employees themselves. In *Ganzon v. Inserto,*[17] however, it was held that the clause would be violated by the substitution of a mortgage with a surety bond as security for the payment of a loan as this would change the terms and conditions of the original mortgage contract over the mortgagee's objection. Remarkably, the change was made by a decision of the trial court, which is not supposed to be covered by the term "law" as used in the impairment clause.

[15a] *Supra.*

[16] 125 SCRA 697.

[17] 123 SCRA 713.

Consti art not necessary

In Article XII, Section 11, of the Constitution, it is provided that no franchise to operate a public utility shall be granted except under the condition that it shall be subject to *"amendment, alteration or repeal by the Congress when the common good so requires"* It is submitted that this reservation is not at all necessary inasmuch as the subject of the franchise is necessarily connected with the public welfare and so is embraced in the police power of the State.

Like the police power, the other inherent powers of eminent domain and taxation may validly limit the impairment clause.

Appropriated a franchise

In *Long Island Water Supply Co. v. Brooklyn,*[18] a private corporation contracted to supply the town of New Lots with water for a period of 25 years. The town was later annexed to the City of Brooklyn, which then sought to expropriate the properties and franchises of the plaintiff. In sustaining the expropriation, the U.S. Supreme Court declared that "a contract is property and, like any other property, may be taken for public use . . . subject to the rule of just compensation. The true view is that the condemnation proceedings do not impair the contract, do not break its obligations, but appropriate it, as they do the tangible property of the company, to public uses."

> This power, denominated 'eminent domain' of the State, is, as its name imports, paramount to all private rights vested under the government, and these last are, by necessary implication, held in subordination to this power, and must yield in every instance to its proper exercise . . . Now, it is undeniable

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[18] 166 U.S. 685.

> that the investment of property in the citizen by the government, whether made for a pecuniary consideration or founded on conditions of civil or political duty, is a contract between the State, or the government acting as its agent, and the grantee, and both the parties thereto are bound in good faith to fulfill it. But into all contracts, whether made between states and individuals, or between individuals only, there enter conditions which arise, not out of the literal terms of the contract itself; they are superinduced by the pre-existing and higher authority of the laws of nature, or nations, or of the community to which the parties belong; they are always presumed, and must be presumed, to be known and recognized by all, are binding upon all, and need never therefore be carried into express stipulation, for this could add nothing to their force. Every contract is made in subordination to them, and must yield to their control, as conditions inherent and paramount, wherever a necessity for their execution shall occur. Such condition is the right of eminent domain. This right does not operate to impair the contract affected by it, but recognizes its obligation in the fullest extent, claiming only the fulfillment of an essential and inseparable condition.

It has also been held that a lawful tax on a new subject, or an increased tax on an old one, does not interfere with a contract or impair its obligation within the meaning of the Constitution. Even though such taxation may affect particular contracts, as it may increase the debt of one person and lessen the security of another, or may impose additional burdens upon one class and release the burdens of another, still the tax must be paid unless prohibited by the Constitution, nor can it be said that it impairs the obligation of any existing contract in its true legal sense.[19]

Taxation

On the other hand, where a law grants a tax exemption in exchange for valuable consideration, such exemption is considered a contract and cannot be repealed because of the impairment clause.[20] All other tax exemptions are not contractual and so may be revoked at will by the legislature.

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[19] The North Missouri R.R. Co. v. McGuire, 87 U.S. 46, cited in La Insular v. Machuca. 39 Phil. 567.

Suggested Reading:

Stone v. Mississippi, 101 U.S. 814
Manila Trading Co. v. Reyes, 62 Phil. 461
Rutter v. Esteban, 93 Phil. 68
Norman v. Baltimore, 294 U.S. 240

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[20] Casanova v. Hord, *supra*.

Chapter 15

EX POST FACTO LAWS

"No ex post facto law or bill of attainder shall be enacted."[1]

Ex Post Facto Law

THE EQUIVALENT of the impairment clause in criminal matters is the prohibition against the passage of the *ex post facto* law. This is so because the *ex post facto* law, like the law impairing the obligation of the contract, operates retroactively to affect antecedent acts. A law can never be considered *ex post facto* as long as it operates prospectively since its strictures would cover only offenses committed *after* and not *before* its enactment. Basically, an *ex post facto* law is one that would make a previous act criminal although it was not so at the time it was committed.

(1) Kinds

More specifically, the following are considered *ex post facto* laws:

(1) Every law that makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act.

Example: A law passed in 2000 raising the age of seduction from eighteen to twenty-five years, effective 1990.

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[1] Art. III, Sec. 22, Constitution.

(2) Every law that aggravates a crime, or makes it greater than it was when committed.

Example: A law passed in 2000 designating the crime of homicide through reckless imprudence as murder, effective 1990.

(3) Every law that changes punishment, and inflicts a greater punishment than the law annexed to the crime when committed.

Example: A law passed in 2000 increasing the penalty for libel from *prision correccional* to *prision mayor,* effective 1990.

(4) Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of the commission of the offense, in order to convict the offender.[2]

Example: A law passed in 2000 requiring for conviction mere preponderance of evidence instead of proof beyond reasonable doubt, effective 1990.

(5) Every law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right for something which when done was lawful.

Example: A law passed in 2000 depriving professionals of the right to practice for failure or refusal to vote, effective 1990.

(6) Every law which deprives persons accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of a proclamation of amnesty.[3]

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[2] Black, Constitutional Law, 595; Mekin v. Wolfe, 2 Phil. 74.

[3] Cooley's Principles of Constitutional Law, 313.

Example: A law passed in 2000 lengthening the period for prescription of blackmail from five to ten years, effective 1990.

(2) Characteristics

It will appear from the above enumeration that to be *ex post facto,* the law must: (1) refer to criminal matters; and (2) be retroactive in its application; (3) to the prejudice of the accused.

Accordingly, it was held in *Republic v. Fernandez*[4] that the War Profits Tax Law retroactively imposing taxes on properties and income acquired during the Japanese Occupation was not an *ex post facto* law as "the prohibition applies only to criminal or penal matters and not to laws which concern civil matters or proceedings generally, or which affect or regulate civil or private rights."

Where a law amending R.A. 3019 provided for the suspension *pendente lite* of any public officer or employee accused of offenses involving fraudulent use of public funds or property, including those charged earlier, it was held in *Bayot v. Sandiganbayan*[4a] that the amendment was not *ex post facto* even if applied retroactively because the suspension was not punitive but merely preventive. P.D. No. 1606 itself, creating the Sandiganbayan, was held to be not a penal law and therefore not *ex post facto.*[4b]

Similar rulings were made by the Supreme Court concerning *habeas corpus* proceedings[5] and also the proclamation suspending the privilege of the writ of *habeas*

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[4] 99 Phil. 934.

[4a] 128 SCRA 383.

[4b] Nuñez v. Sandiganbayan, 111 SCRA 433.

[5] Mekin v. Wolfe, *supra.*

corpus, which was held to be not a statute within the contemplation of Article VII, Section 18, of the Constitution.[6]

In *U.S. v. Gomez Coronel,*[7] an information for adultery filed by the prosecutor was dismissed by the Supreme Court on the ground that at the time of the alleged commission of the offense, prosecution could be commenced only on complaint of the offended spouse. It was held that the amendatory law permitting the prosecutor to initiate the charge was *ex post facto.*

In the subsequent case of *People v. Vilo,*[8] however, the Supreme Court sustained the retroactive application to the accused of an amendatory law allowing affirmation of the death sentence by only eight justices although unanimity was required when the crime was committed by the defendant. The majority decided that the amendment was merely procedural in nature and so did not partake of the nature of an *ex post facto* law.

Even if the law be penal and retroactive, it will still not be *ex post facto* if it does not operate to the disadvantage of the accused. Thus, a law reducing the penalty for murder from death to life imprisonment, applied retroactively, will benefit rather than prejudice the convict and so will be constitutional. But if the punishment originally imposed is retroactively made heavier, or the method of its execution made more severe, then the law will be subject to the constitutional prohibition. An example is a retroactive law providing for the carrying out of the death penalty by hanging rather than by electrocution or the gas chamber, which are regarded as less cruel methods of execution.

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[6] Montenegro v. Castañeda, 91 Phil. 882.

[7] 12 Phil. 279.

[8] 82 Phil. 529.

In *People v. Ferrer,*[9] the Supreme Court rejected the argument that the Anti-Subversion Act was unconstitutional on the ground *inter alia* that it punished past membership in the Communist Party and other similarly-oriented organizations. It declared that the prohibition applied only "to acts committed 'after the approval of this Act.' Only those who knowingly, willfully and by overt acts affiliate themselves with, become or remain members of the Communist Party of the Philippines and/or its successors or of any subversive association' after June 20, 1957, are punished. Those who were members of the Party or of any other subversive association at the time of the enactment of the law were given the opportunity of purging themselves of liability by renouncing in writing and under oath their membership in the Party. The law expressly provides that such renunciation shall operate to exempt such persons from penal liability."

In *Rodriguez v. Sandiganbayan,*[9a] PD 1606 creating this court was held not to be an *ex post facto* law notwithstanding the petitioner's claim that he and his witnesses, who were living in Cagayan de Oro, would be incurring tremendous expenses in coming to and from his trial in Manila where the Sandiganbayan was holding its hearings. The disadvantage or inconvenience was only "limited and unsubstantial," according to Justice Escolin.

In *Katigbak v. Solicitor General,*[9b] Justice Narvasa declared for the Court as follows:

> The forfeiture of the property provided for in Republic Act No. 1379 being in the nature of a penalty; and it being axiomatic that a law is *ex post facto* which *inter alia* "makes criminal an act done before the passage of the law and which was innocent when

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[9] *Supra.*

[9a] 120 SCRA 659.

[9b] 180 SCRA 540.

done, and punishes such an act," or, "assuming to regulate civil rights and remedies only, in effect imposes a penalty of deprivation of a right for something which when done was lawful," it follows that that penalty of forfeiture prescribed by Republic Act No. 1379 cannot be applied to acquisitions made prior to its passage without running afoul of the Constitutional provision condemning *ex post facto* laws or bills of attainder. But this is precisely what has been done in the case of the Katigbaks. The trial court declared certain of their acquisitions in 1953, 1954 and 1955 to be illegal under Republic Act 1379 although made prior to the enactment of the law, and imposed a lien thereon in favor of the government in the sum of P100,000. Such a disposition is constitutionally impermissible.

Bill of Attainder

In the *Ferrer Case,* the Supreme Court cited Justice Frankfurter's observation that "frequently a bill of attainder was doubly objectionable because of its *ex post facto* features. This is the historic explanation for uniting the two mischiefs in one clause . . . Therefore, if a statute is a bill of attainder, it is also an *ex post facto* law. But if it is not an *ex post facto* law, the reasons that establish that it is not are persuasive that it cannot be a bill of attainder."

(1) Characteristics

A bill of attainder is a legislative act that inflicts punishment without trial, its essence being the substitution of legislative fiat for a judicial determination of guilt. It is only when a statute applies either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial that it becomes a bill of attainder.[10]

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[10] People v. Ferrer, *supra.*

> A bill of attainder is a legislative act which inflicts punishment without judicial trial. (Cummings v. United States, 4 Wall. 277, 18 L. ed. 356.) In England, the Bill of Attainder was an act of Parliament by which a man was tried, convicted and sentenced to death without a jury, without a hearing in court, without hearing the witnesses against him and without regard to the rules of evidence. His blood was attainted or corrupted, rendering him devoid of all heritable quality—of acquiring and disposing property by descent. (Ex Parte Garland, 4 Wall. 333, 18 L. ed. 366.) If the penalty imposed was less than death, the act was known as a "bill of pains and penalties/ Bills of attainder, like *ex post facto* laws, were favorite methods of Stuart oppression. Once, the name of Thomas Jefferson was included in a bill of attainder presented to Parliament because of his reform activities.
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> Often, such bills were 'stimulated by ambition or personal resentment, and vindictive malice.' (Calder v. Bull, supra.) A well known case illustrating the ruthless manner in which a bill of attainder was resorted to was that of Thomas Wentworth, chief adviser of Charles I. He was brought to impeachment charged with attempting to subvert the liberties of England. He defended himself so ably that his enemies, fearing his acquittal, withdrew the impeachment and a bill of attainder was passed instead. Wentworth was beheaded. Bills of attainder were also passed in the Colonies (North, The Constitution of the U.S., Its Sources and Applications, p. 85). The prohibition in the Bill of Rights therefore seeks to prevent acts of violence and injustice brought about by the passage of such bills.[11]

In the leading case of *U.S. v. Lovett,*[12] a law contained a provision prohibiting payment from public funds of compensation to the respondents, who were individually named therein, except for jury or military service, unless they were reappointed by the President with the advice and consent of the Senate. The U.S. Supreme Court held this act to be similar to the statutes invalidated in the test oath cases of *Ex Parte Garland*[13] and *Cummings v. Missouri.*[14] "Section 304 thus clearly accomplished the punishment of *named individuals* without judicial trial," it declared. "The fact that the punishment is inflicted through the instrumentality of an Act specially cutting the pay of certain *named individuals* found guilty of disloyalty makes it no less galling or effective than if it had been done by an Act which had designated the conduct as criminal."

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[11] 3 S.H. Laurel, Proceedings of the Constitutional Convention, 661-663 [1966].

[12] 323 U.S. 303.

In *Garner v. Board of Public Works of Los Angeles,*[15] an ordinance prohibited the employment by the City of Los Angeles of any person who during the past five years "advised, advocated or taught the overthrow of the government of the United States or of California" or had been affiliated with any group doing such acts. The Act also required every incumbent employee to execute an affidavit stating "whether or not he is or ever was a member of the Communist Party of the United States of America or of the Communist Political Association, and if he is or ever was such a member, stating the date when he became, and the period during which he was, such a member." Challenged by seventeen employees who were discharged for refusal to comply with the requirement, the ordinance was sustained by the U.S. Supreme Court, which held *inter alia:*

> We think that a municipal employer is not disabled because it is an agency of the State from inquiring of its employees as to matters that may prove relevant to their fitness and suitability for the public service. Past conduct may well relate to present fitness; past loyalty may have a reasonable relationship to present and future trust. Both are commonly inquired into a determining fitness for both high and low positions in private industry and are not less relevant in public employment. The affidavit requirement is valid.

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[13] 4 Wall. 333.

[14] 4 Wall. 277.

[15] 341 U.S. 717.

x x x x

Bills of attainder are legislative acts . .. that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without a judicial trial... United States v. Lovett, 328 US 303, 315, 90 L ed 1252, 66 Ct 1073 (1946). Punishment is a prerequisite. See concurring opinion in United States v. Lovett, *supra* (328 US at 318, 324, 90 L ed 1261, 1264, 66 S Ct 1073). Whether legislative action curtailing a privilege previously enjoyed amounts to punishment depends upon the circumstances attending and the causes of the deprivation.' Cummings v. Missouri (US) 4 Wall 277, 320, 18 L ed 356, 362 (1867). We are unable to conclude that punishment is imposed by a general regulation which merely provides standards of qualification and eligibility for employment.

Suggested Reading:

People v. Ferrer, 43 SCRA 382

People v. Vilo, O.G. 2517

U.S. v. Gomez Coronel, 12 Phil. 279

U.S. v. Lovett, 323 U.S. 303

Garner v. Board of Public Works of Los Angeles, 341 U.S. 717

Katigbak v. Solicitor General, 180 SCRA 540

Chapter 16

NON-IMPRISONMENT FOR DEBT

THE NEW Constitution reproduces *verbatim* the provision in the old Bill of Rights to the effect that *"no person shall be imprisoned for debt or non-payment of a poll tax."*[1] The motive is humanitarian. The Roman Law, for all its durable justice and wisdom, allowed the brutal quartering of the body of the delinquent debtor by his creditors, in proportion to their claims, in much the same way that the assets of the insolvent are now allowed to be distributed proportionally among his obligees. This barbaric treatment was refined somewhat in the Middle Ages, when the debtor was not killed for his defaults but merely imprisoned until he was able to pay his just obligation. "Merely imprisoned" is perhaps an infelicitous phrase. For the truth was that the measure also deserved the strongest condemnation for the cruelty it visited upon the unfortunate debtor, sometimes for the rest of his life, because merely of his poverty. Ultimately, a revolted public opinion inspired the enactment of legislation to discontinue the practice, and this was later embodied in constitutional provisions. The state of Tennessee was the pioneer in this enlightened move, and the other states soon followed. Now this compassionate rule is observed in most civilized jurisdictions as an added guaranty of the liberty of persons against their incarceration for the enforcement of purely private debts because only of their misfortune of being poor.

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[1] Art. III, Sec. 20.

Debt

The term "debt" as used in this provision refers to any civil obligation arising from contract, expressed or implied. As held in *Ganaway v. Quillen,*[2] it includes even debts obtained through fraud since no distinction is made in the Constitution. As long as the obligation to pay arises *ex contractu,* it is considered a private matter between the creditor and the debtor and the punitive arm of the State cannot be employed in a criminal action to enforce the former's right. The remedy in this case is a civil action only for the recovery of the unpaid debt.

Thus, in *Serafin v. Lindayag,*[3] a criminal complaint was filed with respondent judge charging that "the above-named accused with intent of gain did then and there willfully, unlawfully and feloniously owe the sum of One Thousand Five Hundred Pesos, (P1,500.00) Philippine currency; that said amounts has long been due since January 28, 1971" and "that the accused failed to pay her account in spite of due notice sent by registered mail and up to the present she failed to settle her obligation." Although on the face of this complaint no criminal offense had been committed, the judge nevertheless, after a rather hasty preliminary examination, issued a warrant for the arrest of the defendant. The Supreme Court annulled his act, declaring it to be violative of the prohibition against imprisonment for debt.

In the earlier case of *Sura v. Martin,*[4] the defendant in a civil action was ordered arrested for contempt of court because of his failure, owing to his insolvency, to pay the plaintiff past and future support. The Supreme Court held that such arrest was invalid as it would in effect authorize his imprisonment for debt in violation of the Constitution.

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[2] 42 Phil. 805.

[3] 67 SCRA 166.

[4] 26 SCRA 286.

Crime

But although the debtor cannot be imprisoned for his failure to pay his debt, he can be validly punished in a criminal action if he contracted his debt through fraud. In such a case, the act for which he is penalized is the deception he employed in securing the debt, not his default in paying it. The responsibility of the debtor in this situation arises not from the contract of loan, but *ex delicto, i.e.*, from the commission of a crime. As his obligation does not arise *ex contractu,* it is not considered a debt under this provision.

In the *Lozano Case,*[5] Justice Yap declared:

> Has BP 22 transgressed the constitutional inhibition against imprisonment for debt? To answer the question, it is necessary to examine what the statute prohibits and punishes as an offense. Is it the failure of the maker of the check to pay a debt? Or is it the making and issuance of a worthless check in payment of a debt? What is the gravamen of the offense? This question lies at the heart of the issue before us.
>
> The gravamen of the offense punished by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against property, but an offense against public order.

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[5] *Supra.*

In *People v. Merillo*,[6] the accused was charged with violation of a law requiring employers to pay the salaries of their employees at least once every two weeks and providing that failure to do so shall be considered *prima facie* evidence of fraud committed through false pretenses. Against the challenge that it violated the constitutional prohibition against imprisonment for debt, the Supreme Court held the law to be valid, since "what is being punished is the fraud or deceit of the employer who, being able to make payment, shall abstain or refuse to do so without justification."

The suspension of a civil servant for failure to pay a just and admitted debt is an administrative sanction and does not violate the prohibition against imprisonment for debt.[7]

Poll Tax

Since a tax is not a debt but arises from the obligation of the person to contribute his share in the maintenance of the government, failure to pay the same can be validly punished with imprisonment. The only exception is failure to pay a poll tax, which is defined as a specific fixed sum levied upon every person belonging to a certain class without regard to his property or occupation.

This exception, adopted pursuant to the social justice policy, reflects the tender regard of the law for the millions of our impoverished masses who cannot afford even the nominal cost of a poll tax like the basic community tax certificate. It was applied in the case of *People v. Linsangan*[8] in favor of a person convicted of non-payment of the old cedula tax whose appeal was pending at the time of the inclusion of the above rule in the 1935 Constitution.

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[6] G.R. No. L-3401, June 28, 1951.
[7] Flores v. Tatad, 96 SCRA 676.
[8] 62 Phil. 646.

Suggested Reading:

Ganaway v. Quillen, 42 Phil. 805
U.S. v. Cara, 41 Phil. 826
Serafin v. Lindayag, 67 SCRA 166
Ajeno v. Inserto, 71 SCRA 166

Chapter 17

INVOLUNTARY SERVITUDE

SOME DELEGATES to the Constitutional Convention of 1934 believed there was no need for a constitutional prohibition against involuntary servitude because it was not and had never been a major problem in the Philippines. They argued that inclusion of such a provision might even have a negative effect as it could give the impression that slavery had existed in this country on a widespread scale, as in the United States where it had led to a civil war. This was not so, of course; the dimensions of slavery in the Philippines were at best only tribal. Nevertheless, although their objection was tenable, it was voted down. The majority decided just the same to include the following provision, now reiterated in the new Constitution, as a further guaranty of the liberty already protected under the due process clause:

> Sec. 18. (1) No person shall be detained solely by reason of his political beliefs and aspirations.
>
> (2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.[1]

Definition

In an extreme display of redundancy, an American case describes involuntary servitude as "the condition of one who is compelled by force, coercion, or imprisonment, and against his will, to labor for another, whether he is paid or not."[2] The concept includes *slavery,* which is defined as "that civil relation in which one man has absolute power over the life, fortune and liberty of another,"[3] and also *peonage,* or "a condition of enforced servitude by which the servitor is restrained of his liberty and compelled to labor in liquidation of some debt or obligation, real or pretended, against his will."[4]

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[1] Art. III, Sec. 14, Constitution.

It is important to note the first part of the above-quoted rule, which did not appear in the earlier Constitutions. The introduction of this subsection was intended against the recurrence of the much-abhorred practice, employed to excess by the past dictatorship, of arresting political critics and dissenters and indefinitely detaining them without prior conviction and sometimes even without the filing of charges against them, as a means of punishing them for their opposition to the administration.

Restraint of the individual so he can be compelled to work for another, be it the government or a private party, violates the constitutional guaranty, subject to certain exceptions.

Exceptions

Chief among these exceptions is the one expressly provided for in the rule, to wit, *"punishment for a crime whereof the party shall have been duly convicted"* As a matter of fact, such reservation was not even necessary as it is recognized in even primitive societies that malefactors may be validly punished with imprisonment and compelled to work in atonement for their crimes.

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[2] State v. West, 42 Minn. 147; 43 N.W. 845.

[3] Black's Law Dictionary, p. 1559.

[4] Peonage Case, D.C. Ala. 123 F. 671.

While a person may not as a rule be compelled to accept a public appointive office, he may not refuse to do so if the position is intended for the defense of the State. Article II, Section 4, of the Constitution provides that, for this purpose, "*all citizens may be required, under conditions provided by law, to render personal military or civil service.*" A case in point is *People v. Zosa*,[5] where the Supreme Court upheld the National Defense Act, which requires able-bodied twenty-year old males to undergo military training in preparation for their duty to defend the State.

As announced in *Robertson v. Baldwin*,[6] naval enlistment is also not covered by the constitutional prohibition. A person who enlists in the service of a merchant vessel may be compelled to remain in such service until the end of the voyage for which he contracted. Otherwise, it would be possible for its crew to desert the ship in a foreign port, making it difficult for the owners to recruit new hands to continue the voyage and bring the vessel back to the port of origin.

It has also been held that persons may be validly pressed into service under the *posse comitatus* for the apprehension of criminals. A requirement to this effect was sustained in *U.S. v. Pompeya*,[7] where the Supreme Court declared that in the pursuit of persons who have violated the law, such as brigands, the authorities "might command all the male inhabitants of a certain age to assist them." This would be justified under the police power.

Likewise accepted is the rule, first announced in *Kaisahan ng Manggagawa sa Kahoy v. Gotamco Sawmills*,[8] that striking workers in industries affected with public interest, like the lumber industry in this case, or public utilities such as light and telephone companies, may be required to return to work pending settlement of the labor dispute. The purpose of such compulsion is to prevent disruption, to the detriment of the public, of essential services being performed by the strikers.

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[5] 38 O.G. 1676.

[6] 165 U.S. 275.

[7] 31 Phil. 245.

[8] 45 O.G. Supp. No. 9, p. 147.

Finally, it should be remembered that unemancipated minors come under the *patria potestas* and so "are obliged to obey their parents so long as they are under parental power, and to observe respect and reverence toward them always."[9] Thus, a teenager who wants to go to a disco cannot invoke the Constitution against her mother, who insists that she spruce up her bedroom, and the whole house as well.

Application

In *Caunca v. Salazar*,[10] cited earlier, the Supreme Court released on *habeas corpus* a housemaid who was being detained and required to render domestic services in payment for the money advanced for her transportation from the province.

Under the Revised Penal Code, penalties are imposed "upon any person who, in order to require or enforce the payment of a debt, shall compel the debtor to work for him, against his will, as household servant or farm-laborer."[11]

In *Pollock v. Williams*,[12] the U.S. Supreme Court declared unconstitutional a statute providing that any person who receives an advance in consideration of his promise to perform some work but subsequently fails or refuses to do so shall be presumed *prima facie* to have induced the advance with intent to defraud. The effect of such presumption would be to compel him to perform the work for fear of criminal prosecution, in violation of the prohibition against involuntary servitude.

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[9] Art. 311, Civil Code.

[10] 82 Phil. 851.

[11] Art. 247.

[12] 322 U.S. 4.

Suggested Reading:

U.S. v. Pompeya, 31 Phil. 245
Pollock v. Williams, 322 U.S. 4

Chapter 18

THE WRIT OF HABEAS CORPUS

THE WRIT of *habeas corpus* is a prerogative writ of liberty employed to test the validity of a person's detention. If he is restrained of his liberty, he or someone acting on his behalf may file a petition for *habeas corpus* to secure his release. This action shall take precedence in the calendar of the court and must be acted upon immediately. So prized is the liberty of the individual that no less than this swift proceeding is prescribed by our laws to guarantee that his release, if warranted, is not unduly postponed. Obviously, mere delay in the resolution of this issue will by itself constitute an invalid derogation of his right against unlawful restraint.

The writ "is directed to the person detaining another, commanding him to produce the body of the prisoner at a designated time and place, with the day and cause of his caption and detention, to do, to submit to, and receive whatever the court or judge awarding the writ shall consider in his behalf. It is a high prerogative common law writ of ancient origin the great object of which is the liberation of those who may be in prison without sufficient cause."[1]

When Available

The liberty of an individual may be restored by *habeas corpus* where he is subjected to physical restraint, such as arbitrary detention. Even moral restraint is a ground for the issuance of this writ, as where a housemaid is prevented from leaving her employ because of the influence of the person detaining her.[2] A prisoner may secure his release if he was convicted by a court without jurisdiction or where his sentence has become invalid. For example, a person imprisoned for a crime of a political complexion during the Japanese Occupation could demand his release on *habeas corpus* after restoration of the legitimate government, on the ground that his sentence had been automatically extinguished.[3] The same right is available to a person sentenced to a longer penalty than that subsequently meted out to another person convicted of the same offense.[4] The issue here is also one of jurisdiction and so can be tested on *habeas corpus. Habeas corpus* may also be resorted to in case of unlawful denial of bail.[5]

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[1] Moran, Rules of Court, Vol. II, 499.

However, it has been held that where the decision is tainted with only errors of law, a petition for *habeas corpus* will not lie. If the alleged error does not go to the jurisdiction of the court, the proper remedy would not be the prerogative writ but an ordinary appeal.[6] But if the error alleged denies the right to a speedy trial, the same is considered jurisdictional and so may be corrected on *habeas corpus.*[7]

Procedure

It should be noted that it is not the writ itself but only its privilege that may be suspended. When an application for *habeas corpus* is filed and the court finds the petition in proper form, it will issue the writ as a matter of course, ordering the production of the person allegedly detained and requiring the respondent to justify the detention. Only where the return of the respondent shows that the person in custody is being held for a crime covered by the proclamation suspending the privilege of the writ of *habeas corpus* and in a place where it is effective will the court dismiss the petition. In all other cases, it will continue the proceedings to determine the validity of the person's detention.

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[2] Caunca v. Salazar, *supra.*

[3] Alcantara v. Director of Prisons, 75 Phil. 749.

[4] Gumabon v. Director of Prisons, 37 SCRA 420.

[5] Zafra v. City Warden, *infra.*

[6] Celeste v. People, 31 SCRA 391.

[7] Conde v. Rivera, 45 Phil. 650.

At that, suspension of the privilege itself is the exception and not the rule, the rule being the affirmation and not the limitation of liberty. Article III, Section 15, provides that *"the privilege of the writ of* habeas corpus *shall* not *be suspended* except *in cases of invasion or rebellion, when the public safety requires it"* The language is negative, the limitation precise. In the absence of the exceptional conditions mentioned, the privilege of the writ of *habeas corpus* may not be suspended and the individual shall be entitled to the full protection of the writ against any attempt to restrain him.

Grounds for Suspension

To the President is entrusted the power to suspend the privilege of the writ of *habeas corpus.* However, this power is not without limitations and may be revoked by the Congress or the Supreme Court in proper cases.

The aforecited provision must be read with Article VII, Section 18, stating as follows:

> Sec. 18. The President shall be the Commander-in-Chief of all armed forces of the Philippines and whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion or rebellion. In case of invasion or

> rebellion, when the public safety requires it, he may, for a period not exceeding sixty days, suspend the privilege of the writ of *habeas corpus* or place the Philippines or any part thereof under martial law. Within forty-eight hours from the proclamation of martial law or the suspension of the privilege of the writ of *habeas corpus,* the President shall submit a report in person or in writing to the Congress. The Congress, voting jointly, by a vote of at least a majority of all its Members in regular or special session, may revoke such proclamation or suspension, which revocation shall not be set aside by the President. Upon the initiative of the President, the Congress may, in the same manner, extend such proclamation or suspension for a period to be determined by the Congress, if the invasion or rebellion shall persist and public safety requires it.
>
> The Congress, if not in session, shall, within twenty-four hours following such proclamation or suspension, convene in accordance with its rules without need of a call.
>
> The Supreme Court may review, in an appropriate proceeding filed by any citizen, the sufficiency of the factual basis of the proclamation of martial law or the suspension of the privilege of the writ or the extension thereof, and must promulgate its decision thereon within thirty days from its filing.
>
> A state of martial law does not suspend the operation of the Constitution, nor supplant the functioning of the civil courts or legislative assemblies, nor authorize the conferment of jurisdiction on military courts and agencies over civilians where civil courts are able to function, nor automatically suspend the privilege of the writ.
>
> The suspension of the privilege of the writ shall apply only to persons judicially charged for rebellion or offenses inherent in or directly connected with invasion.
>
> During the suspension of the privilege of the writ, any person thus arrested or detained shall be judicially charged within three days, otherwise he shall be released.

The Supreme Court decidedly has the power to annul the suspension of the privilege of the writ of *habeas corpus* if the same is not based on either of the two grounds enumerated in the Constitution, to wit, *"invasion or rebellion, when the public safety requires it."*

In 1951, President Quirino based his suspension of the privilege of the writ of *habeas corpus* on "sedition" and "imminent danger of insurrection or rebellion." If he had not added the latter ground, which was listed in the 1935 charter, the Supreme Court would have, in *Montenegro v. Castañeda*,[8] invalidated his proclamation.

Supposing, however that the suspension is based on the grounds prescribed by the Constitution, will the Supreme Court have the competence to ascertain the existence of such grounds for the purpose of determining the validity of the suspension?

The *Montenegro Case* affirmed the doctrine announced in *Barcelon v. Baker*[9] and held that the determination by the President of the Philippines of the existence of any of the grounds prescribed by the Constitution for the suspension of the privilege of the writ of *habeas corpus* should be conclusive upon the courts. The justification was that the President, with all the intelligence sources available to him as commander-in-chief, was in a better position than the Supreme Court to ascertain the real state of peace and order in the country.

The doctrine in the above case was subsequently abandoned in *Lansang v. Garcia*,[10] where the Supreme Court declared that it had the power to inquire into the factual basis of the suspension of the privilege of the writ of *habeas corpus* by President Marcos in August 1971 and to annul the same if no legal ground could be established. Accordingly, hearings were conducted to receive evidence on this matter, including two closed-door sessions in which relevant classified information was divulged by the government to the members of the Court and three selected lawyers of the petitioners. In the end, a unanimous Court, after satisfying itself that there was actually a massive and systematic Communist-oriented campaign to overthrow the Republic of the Philippines by force, as claimed by the President, decided to uphold the suspension.

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[8] 91 Phil. 882.

[9] 5 Phil. 87.

[10] 42 SCRA 448.

In *Garcia-Padilla v. Enrile,*[11] however, the Supreme Court reversed the Lansang decision and revived the Montenegro doctrine, reiterating that the suspension of the privilege of the writ of *habeas corpus* was a political question to be resolved solely by the President. Fortunately, though, this ruling has been abrogated by Section 18, which has expressly constitutionalized the Lansang doctrine.

To settle once and for all the extent of the President's military powers, the new Constitution has provided for the following significant changes in the original authority of the commander-in-chief.

(1) He may call out the armed forces to prevent or suppress lawless violence, invasion or rebellion only.

(2) The grounds for the suspension of the privilege of the writ and the proclamation of martial law are now limited to invasion or rebellion when the public safety requires it.

(3) The duration of such suspension or proclamation shall not exceed sixty days, following which it shall be automatically lifted.

(4) Within forty-eight hours after such suspension or proclamation, the President shall personally or in writing report his action to the Congress.

(5) If not in session, Congress shall convene within 24 hours following the proclamation or suspension.

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[11] 121 SCRA 472.

(6) The Congress may, by a majority vote of all its members voting jointly, revoke his action. The revocation may not be set aside by the President.

(7) By the same vote and in the same manner, the Congress may, upon the initiative of the President, extend his suspension or proclamation for a period to be determined by the Congress if the invasion or rebellion shall continue and the public safety requires the extension.

(8) The action of the President and the Congress shall be subject to review by the Supreme Court, which shall have the authority to determine the sufficiency of the factual basis of such action. This matter is no longer considered a political question and may be raised in an appropriate proceeding. Moreover, the Supreme Court must decide the challenge within thirty days from the time it is filed.

(9) The challenge may be filed by any citizen.

(10) Martial law does not automatically suspend the privilege of the writ of *habeas corpus* or the operation of the Constitution. The civil courts and the legislative bodies shall remain open. Military courts and agencies are not conferred jurisdiction over civilians where the civil courts are functioning.

(11) The suspension of the privilege of the writ of *habeas corpus* shall apply only to persons facing charges of rebellion or offenses inherent in or directly connected with invasion.

(12) Any person arrested for such offenses must be judicially charged therewith within three days. Otherwise he shall be released.

There is a catch, however, in Section 18 that may not be easily detected. While the President may suspend the privilege of the writ of *habeas corpus* or impose martial law for not more than 60 days, Congress may, on his initiative, extend such measures with the concurrence of only a majority of its members voting jointly, the same vote needed to revoke the presidential acts. The extension in this case may be *indefinite,* depending on the discretion of the legislature, which may be dictated by the President.

A confabulation for this purpose is not impossible where a President already possessed of martial law powers may exercise these to impose his will upon a subservient or intimidated legislature. The only hope in such a situation would be the Supreme Court, which has the power to revoke such an extension for lack of factual basis, but then again much will have to depend upon the courage of that body.

The Ilagan Case

The disturbing case of *Ilagan v. Enrile*[12] deserves the attention and alarm of every citizen. The facts speak for themselves as follows: On May 10, 1985, Atty. Ilagan was arrested by the military on the basis of a mission order allegedly issued by the Ministry of National Defense. On the same day, Atty. Arellano, while visiting his colleague at the detention camp, was also arrested. On May 13, 1985, upon hearing that he was also wanted, Atty. Risonar went to the military camp to verify the report and was also arrested, likewise on the basis of a mission order signed by General Echevarria. A petition for *habeas corpus* was then filed on behalf of the three lawyers by the Integrated Bar of the Philippines, the Free Legal Assistance Group (FLAG), and the Movement of Attorneys for Brotherhood, Integrity and Nationalism (MABINI). The writ was issued on May 16, 1985, and in the return the respondents contended that the detainees were covered by a preventive detention action issued against them on January 25, 1985;

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[12] 139 SCRA 349.

that the privilege of the writ of *habeas corpus* was suspended as to them; and that courts lacked the authority to inquire into the cause and validity of their detention. There was the further insinuation that the detained lawyers were involved in subversive acts. For lack of evidence linking them to such acts, the Supreme Court ordered their temporary release on the recognizance of their principal counsel, former Chief Justice Roberto Concepcion and retired Justice J.B.L. Reyes. The detainees were not released, however. On May 27, 1985, respondents filed an urgent motion for reconsideration of the Court's order, reiterating its lack of jurisdiction because of the suspension of the privilege of *habeas corpus,* and declaring that, while there was an order of the Court for the release of the detainees, there was also a PDA directing their detention, which was binding on the respondents. Then, on the following day, the respondents filed an urgent motion/manifestation stating that an information for rebellion was filed on May 27, 1985, against the detained attorneys before the RTC of Davao and that a warrant of arrest had been issued against them; hence, the petition should be dismissed for having become moot and academic. The Supreme Court agreed with the military and granted the motion, declaring as follows:

> As contended by respondents, the petition herein has been rendered moot and academic by virtue of the filing of an Information against them for Rebellion, a capital offense, before the Regional Trial Court of Davao City and the issuance of a Warrant of Arrest against them. The function of the special proceeding of *habeas corpus* is to inquire into the legality of one's detention. Now that the detained attorney's incarceration is by virtue of a judicial order in relation to criminal cases subsequently filed against them before the Regional Trial Court of Davao City, the remedy of *habeas corpus* no longer lies. The writ has served its purpose.

In an exhaustive and well-reasoned dissent, Justice Teehankee declared *inter alia*:

> The majority decision holds that under Section 4, Rule 102 the writ of *habeas corpus* has served its purpose because of the judicial warrant of arrest issued by the Regional Trial Court. This is based on an erroneous premise that the trial court had such jurisdiction to issue the warrant of arrest and that the denial of a preliminary investigation of petitioners-lawyers was a mere informality or defect. As already emphasized hereinabove, the trial court was totally devoid and ousted of jurisdiction to issue a warrant of arrest because of the gross denial to petitioners-lawyers of their constitutional right to due process.
>
> I vote to grant the petition for *habeas corpus* and to set the petitioners immediately at liberty. Petitioners must be granted their constitutional right to due process and the right to preliminary investigation, as granted by statute and expressly assured to them by respondents in open court at the May 23rd hearing. The railroaded *ex-parte* proceedings and order in the *instant rebellion* case should be declared null and void for lack of jurisdiction in having deprived petitioners of their sacred constitutional right to due process.

For his part, Justice Hermogenes Concepcion, who also dissented, made the following remarks:

> At a time when the Armed Forces of the Philippines has to play a salient role in our affairs of government in view of the existence of rebellion in our midst, there is all the more a greater need for lawyers to defend the rights of individuals against actual or possible abuses of agents of the State.
>
> We must strengthen and solidify the Rule of Law. It is the only way to the survival of democracy in our land.

The Writs of Amparo and Habeas Data

Two complementary writs have been added by the Supreme Court to make the writ of *habeas corpus* more efficacious. These are the writ of *amparo* and the writ of *habeas data* which both became effective in February 2008, after their required publication.

In *habeas corpus* proceedings, the usual defense of the respondent that he does not have custody of the person alleged to be detained, or any information concerning his whereabouts, is enough justification for the dismissal of the petition by the court. Moreover, the presumption that official duty has been validly performed applies in favor of the respondent notwithstanding the general impression that the armed forces are less than observant of human rights, particularly in their treatment of suspected dissidents and legitimate critics of the government.

Under the writ of *amparo*, however, the courts will be more diligent in the protection of the life, liberty, and security of the *desaparecido* and can order the respondent to exert more and actual effort in locating the missing person and showing that he is in good condition and has not been maltreated by the authorities. *Amparo* will provide more protection to him than is available under the writ of *habeas corpus*.

The writ of *habeas data* is intended to insure the human right to privacy by requiring the respondent to produce the necessary information to locate the missing person or such data about him that have been gathered in secret to support the suspicion that he has been taken into custody in violation of his constitutional rights or, worse, has been salvaged without benefit of lawful trial. The writ may also be sought to secure destruction of such secret information gathered in violation of the person's right to privacy to justify summary action against him by the government or any private entity.

For all their optimistic promise, however, the effectiveness of the writs of *amparo* and *habeas data* remains to be seen. Note, however, the recently reported case of the Secretary of National Defense v. Manalo, G.R. No. 180906, Oct. 7, 2008.

Suggested Reading:

Lansang v. Garcia, 42 SCRA 448
Nava v. Gatmaitan, 90 Phil. 172
Gumaua v. Espino, 96 SCRA 402

Chapter 19

SPEEDY DISPOSITION OF CASES

THE OLD saw that "justice delayed is justice denied" is especially meaningful in the Philippines, where litigations have been known to drag for years and even decades before they are at long last terminated. The problem is true in both judicial and administrative cases and has caused a great deal of disenchantment among the people in the administration of justice by our judicial and quasi-judicial tribunals. One reason for the delay in the decision of cases could be the number of litigations filed, an indication perhaps of the litigious nature of our people, and in the case of criminal actions, of their criminal propensities. A more plausible explanation could be the lack of dedication and industry on the part of the judges, many of whom are not really that busy. Another cause could be the leniency of the procedural laws, which permit the parties to employ gambits that only result in delay in the decision of their cases.

Whatever the reason, the Constitution has expressly recognized the problem in Section 16 of the Bill of Rights, which provides that *"all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies"* Tautology aside, this new rule deserves support, provided it is implemented. Implementation depends ultimately upon the Supreme Court, which unfortunately is no paragon of speedy justice either, although it must be added in fairness that this is not entirely its fault.

So concerned, apparently, is the Constitution with this problem that it has not confined itself to the inclusion of this express guaranty in the Bill of Rights. Expectedly, it reiterates in Section 14(2) the rule that the accused shall be entitled to a speedy trial. In addition, it now embodies several other new rules all aimed against delay in the administration of justice by judicial and administrative tribunals.

Thus, in Article VIII, Section 5(3), the Supreme Court is now expressly permitted to temporarily assign a judge from one station to another when the public interest so requires, as when there is a necessity for a less occupied judge to help a busier colleague in another district. In paragraph 5 of the same Section 5, it is required that the rules of court to be promulgated by the Supreme Court *"shall provide a simplified and inexpensive procedure for the speedy disposition of cases"* And in Section 15(1) of the same Article, another new provision, maximum periods are prescribed for the decision or resolution of cases, to wit, twenty-four months in the case of the Supreme Court, twelve months for all lower collegiate counts unless reduced by the Supreme Court, and three months for all other lower courts. The provision goes on to say that:

> (2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.
>
> (3) Upon the expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
>
> (4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have been incurred in consequence thereof, shall decide or resolve

> the case or matter submitted thereto for determination, without further delay.

Also to be noted regarding dispatch in the decision of administrative cases is Article IX-A, Section 7, which says that "*each (Constitutional) Commission shall decide by a majority vote of all its Members any case or matter brought before it within sixty days from its submission for decision or resolution.*"

Suggested Reading:

Conde v. Rivera, 45 Phil. 650

Flores v. People, 61 SCRA 331

Chapter 20

RIGHTS OF THE ACCUSED

MORE THAN HALF of the Bill of Rights deals with the protection of the person facing criminal investigation or prosecution. In addition to due process in general and the prohibitions against unreasonable searches and seizures, *ex post facto* laws, bills of attainder, involuntary servitude, and imprisonment for debt, which are discussed elsewhere in this book, the person suspected or accused of a crime is entitled to the specific safeguards embodied in Sections 12, 13, 14, 17, 19, and 21 of Article III against his arbitrary prosecution or punishment. Some of these are reiterations of old rules but there are a number of significant new provisions that have definitely improved the present Bill of Rights and made it a better guardian of the liberty of the individual whose innocence is being questioned. Each of these rights will be the subject of the following discussion.

Criminal Due Process

> Sec. 14. (1) No person shall be held to answer for a criminal offense without due process of law.

Article III, Section 1, deals with due process in general and covers both its substantive and procedural aspects. Moreover, it applies to all kinds of proceedings, civil, criminal and administrative. By contrast, Section 14(1) is restricted to criminal cases only and purely to their procedural requirements.

Criminal due process requires that the accused be tried by an impartial and competent court in accordance with the procedure prescribed by law and with proper observance of all the rights accorded him under the Constitution and the applicable statutes. Accordingly, to illustrate, denial from him of the right to preliminary investigation, as required by law, will constitute a denial of due process.[1]

It should be noted that the right to a preliminary investigation is not among the rights granted to the accused in the Bill of Rights. It is purely statutory. Even so, denial of this right, in the absence of a valid waiver, will violate due process.[2]

As Justice Ynares-Santiago put it in *Sales v. Sandiganbayan*:[2a]

> While the right (to preliminary investigation) is statutory rather than constitutional in its fundament, it is a component part of due process in criminal justice. The right to have a preliminary investigation conducted before being bound over to trial for a criminal offense and hence formally at risk of incarceration or some other penalty is not a mere formal or technical right; it is a substantive right. To deny the accused's claim to a preliminary investigation would be to deprive him of the full measure of his right to due process.

In the landmark case of *Salonga v. Paño*,[3] the petitioner moved for the dismissal of the subversion charges against him on the ground of the lack of a *prima facie* case. The motion was denied and he went to the Supreme Court, where he was upheld. The Court found the supposed evidence against him extremely tenuous; the testimony of the prosecution witnesses was contradictory and incredible, if not at times exculpatory; a photograph in which he and another accused appeared was rejected as evidence of subversion, as so too was the claim that his house had been used as a "contact point" of the conspirators; and certain remarks made by the petitioner which were critical of the Marcos administration were considered protected by freedom of expression.

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[1] Patanao v. Enage, 121 SCRA 228.

[2] Bunye v. Sandiganbayan, 205 SCRA 92.

[2a] 369 SCRA 293.

[3] 134 SCRA 438.

"The respondent judge should have taken these factors into consideration before concluding that a *prima facie* case exists against the petitioner," Justice Gutierrez declared. Stressing "the citizen's right to be free not only from arbitrary arrest and punishment but also from unwarranted and vexatious prosecution," he declared that "the integrity of a democratic society is corrupted if a person is carelessly included in the trial of around forty persons when on the face of the record no evidence linking him to the alleged conspiracy exists."

> . . . in order to satisfy the due process clause, it is not enough that the preliminary investigation is conducted in the sense of making sure that the transgressor shall not escape with impunity. A preliminary investigation serves not only the purposes of the State. More important, it is a part of the guarantee of freedom and fair play which are birthrights of all who live in our country. It is therefore imperative upon the fiscal or the judge, as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused.

The sincerity of this decision was weakened, however, by the fact that it was rendered after the prosecution, on instruction from above, had itself moved for the dismissal of the charges against Salonga. According to Justice Gutierrez, the Court had earlier decided to grant the petition, but it was only on February 18, 1985, after President Marcos had instructed the prosecutor to re-study the charges, that the decision was released. In his concurring opinion, Justice Abad Santos commented, "The decision could have had a greater impact had it been promulgated prior to the executive action," meaning after the consensus was reached on October 24, 1984 and the *ponencia* started to circulate for signature on November 2, 1984. What delayed—or triggered—its release? So much then for the retroactive courage of the Supreme Court of that time.

Obviously, the basic ingredient of criminal due process is a trial conducted in accordance with the rudiments of fair play. Hence, the accused has a right to complain if the judge has a personal or pecuniary interest in the outcome of the case, as where he is allowed to share in the fines he may impose[4] or where he is covered by the disqualification enumerated in the Rules of Court.[5]

In *Galman v. Sandiganbayan*,[6] the Supreme Court, acting on a second motion for reconsideration of the decision of respondent court acquitting all the accused in the slaying of Benigno S. Aquino and Rolando Galman, created a fact-finding commission which, after holding extensive hearings, concluded that the trial had been rigged and the acquittal pre-ordained by no less than President Marcos himself. The Court, adopting these findings, annulled the proceedings and ordered a new trial of the case, declaring that the interference and pressure of the President was violative of due process and prevented a fair and impartial trial. Chief Justice Teehankee wrote:

> The fact of the secret Malacañang conference of January 10, 1985 at which the authoritarian President discussed with the Presiding Justice of the Sandiganbayan and the entire prosecution panel the matter of the imminent filing of the criminal charges

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[4] Tumey v. Ohio, 273 U.S. 510.

[5] Rule 137, Sec. 1.

[6] 144 SCRA 43.

against all the twenty-six accused (as admitted by respondent Justice Fernandez to have been confirmed by him to the then President's "Coordinator" Manuel Lazaro on the preceding day) is not denied. It is without precedent. This was illegal under our penal laws, *supra*. This illegality vitiated from the very beginning all proceedings in the Sandiganbayan court headed by the very Presiding Justice who attended. As the Commission noted: "The very acts of being summoned to Malacañang and their ready acquiescence thereto under the circumstances then obtaining, are in themselves pressure dramatized and exemplified. x x x Verily, it can be said that any avowal of independent action or resistance to presidential pressure became illusory from the very moment they stepped inside Malacañang Palace on January 10, 1985."

No Court whose Presiding Justice has received "orders or suggestions" from the very President who by an amendatory decree (disclosed only at the hearing of oral arguments on November 8, 1984 on a petition challenging the referral of the Aquino-Galman murder cases to the Tanodbayan and Sandiganbayan instead of to a court martial, as mandatorily required by the known P.D. 1850 at the time providing for exclusive jurisdiction of courts martial over criminal offenses committed by military men) made it possible to refer the cases to the Sandiganbayan, can be an impartial court, which is the very essence of due process of law. As the writer then wrote, 'jurisdiction over cases should be determined by law, and not by preselection of the Executive, which could be much too easily transformed into a means of predetermining the outcome of individual cases." This criminal collusion as to the handling and treatment of the cases by public respondents at the secret Malacañang conference (and revealed only after fifteen months by Justice Manuel Herrera) completely disqualified respondent Sandiganbayan and voided *ab initio* its verdict. This renders moot and irrelevant for now the extensive arguments of respondents accused, particularly Generals Ver and Olivas and those categorized as accessories, that there has been no evidence or witness suppressed against them, that the erroneous conclusions of Olivas as police investigator do not make him an accessory of the crimes he investigated and the appraisal and evaluation of the testimonies of the witnesses presented and suppressed. There will be time and opportunity to present all these arguments and considerations at the remand and retrial of the cases herein ordered before a neutral and impartial court.

> The Supreme Court cannot permit such a sham trial and verdict and travesty of justice to stand unrectified. The courts of the land under its aegis are courts of law and justice and equity. They would have no reason to exist if they were allowed to be used as mere tools of injustice, deception and duplicity to subvert and suppress the truth, instead of repositories of judicial power whose judges are sworn and committed to render impartial justice to all alike who seek the enforcement or protection of a right or the prevention or redress of a wrong, without fear or favor and removed from the pressures of politics and prejudice. More so, in the case at bar where the people and world are entitled to know the truth, and the integrity of our judicial system is at stake. In life, as an accused before the military tribunal, Ninoy had pleaded in vain that as a civilian he was entitled to due process of law and trial in the regular civil courts before an impartial court with an unbiased prosecutor. In death, Ninoy, as a victim of the treacherous and vicious assassination, and the relatives and sovereign people as the aggrieved parties, plead once more for due process of law and a retrial before an impartial court with an unbiased prosecutor. The Court is constrained to declare the sham trial a mock trial—the non-trial of the century—and that the predetermined judgment of acquittal was unlawful and void *ab initio*.

A mistrial may be declared if it is shown that the proceedings were held under such circumstances as would prevent the accused from freely making his defense or the judge from freely arriving at his decision. Thus, the proceedings were annulled in one case where it was shown that a mob had crowded into and surrounded the courtroom, intimidating defense counsel and their clients and practically compelling a conviction,[7] and, in another, where a massive persecution campaign was launched against the defendant by the newspapers and by this adverse trial by publicity the minds of the jurors were poisoned, resulting in his being declared guilty.[8]

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[7] Moore v. Dempsey, 261 U.S. 89.

[8] Sheppard v. Maxwell, 348 U.S. 362.

In *Rochin v. California,*[9] police authorities forced an emetic solution through a tube into the stomach of a suspect to eject two narcotic pills he had swallowed to prevent their use as evidence against him. The U.S. Supreme Court described the act as "too close to the rack and the screw" and absolved the accused. But where in *Breithanpat v. Abram,*[10] a doctor extracted a small amount of blood from a person while he was unconscious to determine whether or not he was intoxicated at the time of a vehicular accident in which he was involved, it was held that the said act and the subsequent use of the results of the blood test as evidence against him did not violate due process.

In *Martelino v. Alejandrino,*[11] our Supreme Court declared that "the spate of publicity in this case before us did not focus on the guilt of the petitioners but rather on the responsibility of the Government for what was claimed to be a 'massacre' of Muslim trainees. If there was 'trial by newspaper' at all, it was not of the petitioners but of the Government. Absent here is a showing of failure of the court martial to protect the accused from massive publicity encouraged by those connected with the conduct of the trial either by a failure to control the release of information or to remove the trial to another venue or to postpone it until the deluge of prejudicial publicity shall have subsided."

Due process is also denied where a person is impleaded for violation of a law, administrative regulation[12] or municipal ordinance[13] not previously published as he would not know what acts he must do or avoid to prevent prosecution. Where appeal is permitted by the Constitution or by statute, denial thereof will also militate against due process.[14]

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[9] 342 U.S. 165.

[10] 352 U.S. 432.

[11] 32 SCRA 106.

[12] People v. Que Po Lay, 50 O.G. 4850; Pesigan v. Angeles, 129 SCRA 174; People v. Veridiano, 132 SCRA 524.

[13] People v. De Dios, 106 Phil. 1159 (unreported).

In the interesting case of *Pesigan v. Angeles*,[15] the carabaos plaintiffs were taking from Camarines Sur to Batangas were confiscated in Camarines Norte pursuant to Executive Order No. 626-A prohibiting transporting of carabaos from one province to another. Plaintiffs sued for the recovery of the animals and for damages. The Supreme Court held that the executive order should not have been enforced against them on April 2, 1982, because it was published only in the Official Gazette dated June 14, 1982, more than two months later. The penal regulation became effective only after 15 days from June 14, 1982, under Article 2 of the Civil Code and Section 11 of the Revised Administrative Code.

The above ruling was amended five months later in the case of *People v. Veridiano*,[16] involving the issuance of a bouncing check in May 1979 allegedly in violation of BP 22 as published in the Official Gazette dated April 9, 1979. The Solicitor General argued that the law became effective 15 days from the said date as, according to Section 11 of the Revised Administrative Code, the Gazette is conclusively presumed to be published on the day indicated, therein as the date of issue. However, the accused obtained a certification from the Government Printing Office that the said issue was "officially released for circulation on June 14, 1979." The Supreme Court held that the law became effective 15 days from the date of release, i.e., June

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[14] Reyes v. Court of Appeals, 80 SCRA 143; Tañada v. Tuvera, *supra.*

[15] 129 SCRA 174; this measure was declared unconstitutional in *Ynot v. Intermediate Appellate Court, supra.*

[16] 132 SCRA 524.

14, 1979, which it considered the date of publication. The dismissal of the charge was affirmed.

The ambiguity of the original decision of *Tañada v. Tuvera* was finally clarified in the resolution[17] of the motion for reconsideration where the Supreme Court unanimously declared that the laws, presidential decrees and other executive issuances intended to have the force of law should first be published in the Official Gazette (and not elsewhere) before they may become effective fifteen days after publication, unless a different period is prescribed.

It should be remembered, however, that under Executive Order No. 200, issued on June 18, 1987, publication may now be made in a newspaper of general circulation in the Philippines with the same efficacy as publication in the Official Gazette.

Self-Incrimination

> Sec. 17. No person shall be compelled to be a witness against himself.

The right against self-incrimination has its roots in the common law and is based on humanitarian and practical considerations. Humanitarian because it is intended to prevent the State, with all its coercive powers, from extracting from the suspect testimony that may convict him. Practical because a person subjected to such compulsion is likely to perjure himself for his own protection.

This right is available not only in criminal prosecutions but also in all other government proceedings, including civil actions and administrative or legislative investigations. It may be claimed not only by the person accused of an offense but by any witness to whom an incriminating question is addressed.

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[17] 146 SCRA 446.

(1) Scope

As long as the question will tend to incriminate, the witness is entitled to the privilege. In all other cases, he may not refuse to answer provided the question is relevant and otherwise allowed even if the answer may tend to embarrass him or subject to him to civil liability.[18] The right may not be invoked where the question asked relates to a past criminality for which the witness can no longer be prosecuted, as where the crime was already prescribed or he has already been acquitted or convicted thereof. He may also not refuse to answer where he has been previously granted immunity under a validly enacted statute.[19]

The kernel of the right, it has been held, is against not all compulsion but testimonial compulsion only.[20] Hence, a person may be compelled to submit to a physical examination of his body to determine his involvement in an offense of which he is accused. In *U.S. v. Tan Teng*,[21] for example, where a person charged with rape was examined for gonorrhea, which might have been transmitted to the victim, the Supreme Court held the examination to be valid, saying it was no different from examining his fingerprints or other parts or features of his body for identification purposes. A similar ruling was announced in the case of *Villaflor v. Summers*,[22] involving the examination of a woman accused of adultery to ascertain if she was pregnant. The Supreme Court quoted Justice Holmes in the case of *Holt v. United States*,[23] where he said: "The prohibition of compelling a man in a criminal court to be a witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from him, not an exclusion of his body as evidence when it may be material."

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[18] Brown v. Walker, 161 U.S. 951; U.S. v. Brooks, 284 F. 903.

[19] 58 Am. Jur. Witnesses, Secs. 84-88.

[20] 4 Wigmore, Sec. 2263.

[21] 23 Phil. 145.

[22] 41 Phil. 62.

[23] 218 U.S. 245; see Alih v. Castro, 151 SCRA 279.

The prohibition applies to the compulsion for the production of documents, papers and chattels that may be used as evidence against the witness, except where the State has a right to inspect the same, such as the books of accounts of corporations, under the police power.[24] The privilege also protects the accused against any attempt to compel him to furnish a specimen of his handwriting in connection with his prosecution for falsification, as held in *Beltran v. Samson.*[25] The Supreme Court here said: "Writing is something more than moving the body, or the hand, or the fingers; writing is not a purely mechanical act, because it requires the application of intelligence and attention; and in the case at bar writing means that the petitioner herein is to furnish a means to determine whether or not he is the falsifier."

(2) When Available

As a rule, the privilege against self-incrimination may be invoked only when and as the incriminating question is asked, since the witness has no way of knowing in advance the nature or effect of the question to be put to him. This is true, however, only of the ordinary witness. In the case of the accused himself, it is settled that he can refuse at the outset and altogether to take the stand as a witness for the prosecution, on the reasonable assumption that the purpose of his interrogation will to be incriminate him.

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[24] 4 Wigmore, Sec. 2264.

[25] 53 Phil. 570.

In *Chavez v. Court of Appeals*,[26] the prosecutor called on one of the accused, the petitioner herein, as his first witness. The petitioner demurred, invoking his right against self-incrimination, but was finally compelled to testify under pressure from the court. Convicted on the strength of testimony elicited from him as the "star witness for the prosecution," in the words of the judge, he filed a petition for *habeas corpus*. The Supreme Court granted the writ, declaring *inter alia* through Justice Sanchez:

> Petitioner is a defendant in a criminal case. He was called by the prosecution as the first witness in that case to testify for the People during the first day of trial thereof. Petitioner objected and invoked the privilege of self-incrimination. This he broadened by the clearcut statement that he will not testify. But petitioner's protestations were met with the judge's emphatic statement that it is the right of the prosecution to ask anybody to act as witness on 'the witness-stand including the accused,' and that defense counsel 'could not object to have the accused called on the witness stand.' The cumulative impact of all these is that accused-petitioner had to take the stand. He was thus peremptorily asked to create evidence against himself. The foregoing situation molds a solid case for petitioner, backed by the Constitution, the law and jurisprudence.
>
> Petitioner, as accused, occupies a different tier of protection from an ordinary witness. Whereas an ordinary witness may be compelled to take the witness stand and claim the privilege as each question requiring an incriminating answer is shot at him, an accused may altogether refuse to take the witness stand and refuse to answer any and all questions. For, in reality, the purpose of calling an accused as a witness for the People would be to incriminate him. The rule positively intends to avoid and prohibit the certainly inhuman procedure of compelling a person to furnish the missing evidence necessary for his conviction."

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[26] 24 SCRA 663.

(3) Waiver

Nevertheless, the right against self-incrimination may be waived, either directly or by a failure to invoke it, provided the waiver is certain and unequivocal and intelligently, understandingly and willingly made. Thus, one who under a subpoena *duces tecum* voluntarily surrenders an incriminating paper which is put in evidence against him is deemed to have waived the privilege, as so too is an accused who takes the witness stand and offers testimony on his behalf. In the latter case, the witness may be cross-examined and asked incriminating questions on any matter he testified to on direct examination.[27]

Custodial Investigation

> Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado,* or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families.

Custodial investigation means any "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way."[28]

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[27] 98 CJS Witnesses, Sec. 456.

According to R.A. 7438, "custodial investigation shall include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the 'inviting' officer for any violation of law."

An extrajudicial confession, to be admissible, must be: (1) voluntary; (2) with assistance of counsel; (3) in writing; and (4) express.[28a]

In the landmark case of *Miranda v. Arizona*,[29] the United States Supreme Court declared through Chief Justice Earl Warren:

> Our holding will be spelled out with some specificity in the pages which follow but briefly stated it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incriminations. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused-persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. If, however, he indicates in any manner and at any stage of the process that he wishes to consult with an attorney before speaking there can be no questioning. Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated,

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[28] Miranda v. Arizona, *infra*.

[28a] People vs. Hernandez, 327 SCRA 650.

[29] 384 U.S. 436.

> the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

Inspired by this case and the earlier decisions of the same court in *Gideon v. Wainwright*[30] and *Escobedo v. Illinois*,[31] our Bill of Rights now provides in Section 12 for the several rights available to the person facing custodial investigation.

The above-quoted excerpt summarizes and explains the import of these rights.

More protection is thus accorded the suspect who otherwise could be easily pressured, by physical force or other forms of compulsion, including the condition of being held *incommunicado* or in solitary confinement or being held in secret detention places and thus unable to seek the advice and moral support of counsel, into making damaging confessions.

In *People v. Buscato*,[32] the accused were convicted on the basis of extrajudicial confessions extracted through their maltreatment during their custodial investigation from January 15 to 18, 1973. Their conviction was reversed on the ground that the physical, mental and moral coercion exerted upon them rendered the confessions inadmissible as contrary to the right against self-incrimination. The Court quoted from *People v. Bagasala*,[33] where Justice Fernando declared:

> It is likewise timely to impress anew on police officials that the imperative requirements of truth and humanity condemn the

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[30] 372 U.S. 335.

[31] 378 U.S. 478.

[32] 74 SCRA 30.

[33] 39 SCRA 236.

> utilization of force and violence to extract confessions from unwilling victims. Crimes must be punished and the guilty must not be allowed to escape. A desirable end cannot, however, be attained by unconstitutional means. There should be less than full respect for the law if in the process of enforcing it lawless methods are employed.

Likewise excluded in the case of *People v. Ramos,*[34] were the admissions of the accused during his custodial investigation. Although there was evidence that he had been apprised of his rights under this provision, the Court observed that "appellant has only finished Grade VI, which means that he is not adequately educated to understand fully and fairly the significance of his constitutional rights to silence and to counsel. As mandated it is not enough that the police investigator merely inform him of his constitutional right to silence and to counsel, and then taking statements down, the interrogating officer must have patience in explaining these rights to him. The records do not reveal that these requirements have been fully complied with, nor was there any showing that appellant has been represented by counsel during custodial investigation." The conviction was reversed.

Grade 6 guy

In *People v. Galit,*[35] the Supreme Court reiterated *Morales v. Enrile*[36] concerning the treatment of a person under custodial investigation. The confession was rejected because of the proven torture inflicted on the accused. Moreover, before his interrogation, he was informed of his rights in a lengthy statement followed by the question of whether he was ready to make his statement, to which he replied: "Opo." According to Justice Hermogenes Concepcion, Jr., "Such a long question, followed by a monosyllabic

Proven torture

Monosyllabic answer -- not enough

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[34] 122 SCRA 312.
[35] 135 SCRA 465.
[36] 121 SCRA 538.

answer does not satisfy the requirements of the law that the accused be informed of his rights."

In *People v. Pecardal*,[37] the Supreme Court said:

17 yrs old

> We note that at the time the accused-appellant was apprehended and interrogated, he was only seventeen years old. That is a susceptible age. One can accept how easily a teenager can succumb to the pressure exerted upon him by hardened investigators experienced in extracting confessions through the use of methods less than legal. That pressure was in this case irresistible.

And in *People v. Capitin*,[38] it was held:

Limited knowledge of tagalog + strong duress

> The confession was completely inadmissible because it was taken without observance of the safeguards provided by the Bill of Rights for the protection of the suspect facing custodial investigation. A reading of the supposed confession shows there was the usual mechanical advise of the suspect's rights, including the right to assistance of counsel, followed by the sacramental query as to whether or not she was waiving her right to such assistance, followed by the stereotyped answer so familiar in statements of this nature. As unacceptable as the question was, the answer thereto was no less so and could not have been possibly composed by the accused-appellant in her state of mind at the time and given her limited knowledge of Tagalog . . . It is not believable that the organized and ready answer, with all its legal overtones, could have come from this 22-year old housemaid, who on top of her deficiencies in the language (and the law), was presumably not thinking clearly then (even assuming she was sane) because she had just killed her child and was under strong emotional stress.
>
> If confessions written in advance by the police for persons of limited intelligence or educational attainment have been outlawed, the same disapprobation applies where a confession was signed by a person whose sanity was dubious, where the intelligence was not only limited but impaired.

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[37] 145 SCRA 674.

[38] 165 SCRA 47.

Doctors and evidence of manhandling

It is worth noting that in *People v. Barros*[39] the Court made the salutary reminder that swearing officers should have the confessants physically examined by independent doctors before administering the oath, to discourage attempts to secure confessions through violence. One such confession was rejected in *People v. Cabrera*[40] on the strength of the medical evidence of the defendants' manhandling by the police authorities.

The new Section 12 stresses the right of the person under investigation to *"competent and independent counsel, preferably of his own choice"* to be provided free if he cannot afford counsel *de parte.* This and the other rights guaranteed in Subsection 1 may be waived by the suspect so long as he does this in writing and in the presence of counsel, who has presumably advised him. This advice may include the waiver of the counsel's services, as earlier suggested in the *Galit Case.*[41]

In *People v. Macam,*[42] Justice Camilo D. Quiason said for the Supreme Court:

Competent counsel + choice

> In *Gamboa v. Cruz,* 162 SCRA 642 (1988), we held that the right to counsel attached upon the start of an investigation, i.e., when the investigating officer starts to ask questions to elicit information, confessions or admissions from the accused (See also People v. Dimaano, 209 SCRA 809 [1992]).
>
> Historically, the counsel guarantee was intended to assure the assistance of counsel at the trial, inasmuch as the accused was "confronted with both the intricacies of the law and the advocacy of the public prosecutor." However, as a result of the changes in patterns of police investigation, today's accused confronts both expert adversaries and the judicial system well before his trial begins (Citations omitted). It is therefore appropriate to extend the counsel guarantee to critical stages of prosecution even before the trial.

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[39] 122 SCRA 34.

[40] 134 SCRA 362.

[41] *Supra.*

[42] 238 SCRA 306.

> The law enforcement machinery at present involves critical confrontations of the accused by the prosecution at pre-trial proceedings "where the result might well settle the accused's fate and reduce the trial itself to a mere formality." A police line-up is considered a "critical" stage of the proceedings (Citations omitted).
>
> After the start of the custodial investigation, any identification of an uncounseled accused made in a police line-up is inadmissible. This is particularly true in the case at bench where the police officers first talked to victims before the confrontation was held. The circumstances were such as to impart improper suggestions on the minds of the victims that may lead to a mistaken identification. Appellants were handcuffed and had contusions on their faces.

Without stating reasons, however, the Supreme Court seems to have overturned the above case in *People v. Lamsing*[42a] and *People v. Salvatierra*.[42b] In *De la Torre v. Court of Appeals*,[42c] it reiterated the rule in the *Gamboa Case* that the right to counsel is not available during a police line-up as this is not considered part of the custodial investigation.

In *People v. Compil*,[43] the accused was upon his arrest in Quezon, where he had fled, subjected by the police to informal inculpatory interrogation that continued during their trip back to Manila, where his formal investigation was conducted at the police station. He was not even then assisted by counsel, who arrived the following day. The Supreme Court held that his right to counsel began when the interrogation started in Quezon. "The operative act," according to Justice Bellosillo, "is when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect who has been taken into custody by the police to carry out a process of interrogation that lends itself to eliciting incriminatory statements."

[42a] 248 SCRA 471.

[42b] 276 SCRA 55.

[42c] 294 SCRA 196.

[43] 244 SCRA 135.

In *People v. Lucero,*[44] the counsel *de oficio* was present at the start of the custodial investigation of the accused but left after a while to attend the wake of a friend. The next morning, two CIS agents police took Lucero and his signed confession to the lawyer's house, and the lawyer asked him if he had freely signed it. When the accused said yes, obviously under pressure from his military escort, the lawyer also signed the confession to authenticate its regularity. The Court rejected the confession, holding that the Constitution requires not just "any kind of counsel but effective and vigilant counsel."

A re-enactment of the crime in the absence of counsel is inadmissible evidence against the accused, according to *People v. Suarez.*[45] In *People v. Bonola,*[46] the Supreme Court held as invalid the waiver of the suspect's custodial rights without the assistance of counsel. Where the suspect's confession was taken by the police before advising him of his custodial rights, the Supreme Court held in *People v. Andan*[47] that the evidence against him was inadmissible. But the right to counsel is not unlimited, according to *People v. Serzo,*[47a] where the accused repeatedly asked for postponement of his trial on the ground that he was still looking for a lawyer *de parte.* The court should then appoint a counsel *de oficio* for him.

As Justice Artemio V. Panganiban observed:

> The right to counsel of an accused is guaranteed by our Constitution, our laws and our Rules of Court. During custodial inves-

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[44] 244 SCRA 425.

[45] 267 SCRA 119.

[46] 274 SCRA 238.

[47] 269 SCRA 95.

[47a] 274 SCRA 553.

> tigation, arraignment, trial and even on appeal, the accused is given the *option* to be represented by a *counsel of his choice.* But when he neglects or refuses to exercise this option during arraignment and trial, the court shall appoint one for him. While the right to be represented by counsel is absolute, the accused's option to hire one of his own choice is limited. Such option cannot be used to sanction reprehensible dilatory tactics, to trifle with the Rules or to prejudice the equally important rights of the State and the offended party to speedy and adequate justice.

Subsection 4 is a new provision and was most likely inspired—perhaps "provoked" is the better word—by the widespread rumors and open complaints during the martial law regime of the many abuses committed by the military, including hamleting, salvaging, and "zona" operations, which were consistently denied and, during that time, seldom proved. By this provision, it is hoped that such abuses may be deterred and, if committed, punished with appropriate civil and criminal sanctions that, besides compensating the victims for their injuries, should also serve as a warning against the repetition of such acts.

In *Guazon v. De Villa,*[47b] the petitioners challenged the practice of the military of rounding up the residents in a particular area and requiring them to line up for inspection, to ferret out fugitives from justice and suspected criminals. The Supreme Court, rather than addressing the issue frontally, merely remanded the petition to the Regional Trial Courts of Manila, Malabon and Pasay City, "where the petitioners may present evidence supporting their allegations and where specific erring parties may be pinpointed and prosecuted."

In his dissent, Justice Cruz said in part:

> The saturation drive is not unfamiliar to us. It is like the "zona" of the Japanese Occupation. An area was surrounded by soldiers and all residents were flushed out of their houses and

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[47b] 181 SCRA 623.

> lined up, to be looked over by a person with a bag over his head. This man pointed to suspected guerrillas, who were immediately arrested and eventually if not instantly executed.
>
> To be sure, there are some variations now. The most important difference is that it is no longer 1943 and the belligerent occupation is over. There is no more war. It is now 1990, when we are supposed to be under a free Republic and safeguarded by the Bill of Rights.

Justice Sarmiento also dissented, observing *inter alia*:

> That "the problem is not initially for the Supreme Court" is to me, an abdication of judicial duty. As I indicated, the controversy is purely one of law—the facts being indisputed. Law, needless to say, is the problem of the Supreme Court, not the Executive.
>
> Worse, it is passing the buck. The petitioners, precisely, have a grievance to raise, arising from abuses they pinpoint to the lower offices of the Executive (which presumably has its imprimatur). To make it an executive problem, so I hold, is to make the Executive judge and jury of its own acts, and hardly, a neutral arbiter.

Under R.A. 7309, victims of unjust imprisonment, arbitrary or illegal detention, or of violent crimes may file a claim for damages with the Board of Claims under the Department of Justice. For victims of unjust imprisonment or detention, the award shall be not more than P1,000.00 for each month of imprisonment. In all other cases, the award shall not exceed P10,000.00 or the expenses incurred for hospitalization, medical treatment, loss of wage, loss of support or other expenses directly related to the injury, whichever is lower, without prejudice to the right of the claimant to seek other remedies under existing laws."

Bail

> Sec. 13. All persons, except those charged with offenses punishable by *reclusion perpetua* when evidence of guilt is strong, shall, before conviction, be bailable by sufficient sureties, or be re-

> leased on recognizance as may be provided by law. The right to bail shall not be impaired even when the privilege of the writ of *habeas corpus* is suspended. Excessive bail shall not be required.

"Bail is the security given for the release of a person in custody of the law, furnished by him or a bondsman, conditioned upon his appearance before any court as may be required."[48]

To begin with, it should be borne in mind that only persons under detention may petition for bail, for the purpose of bail is to secure their provisional release. It follows that one who is not in the custody of the law cannot ask for bail.[49] However, bail cannot be denied simply because the person detained has not yet been formally charged in court but is still under investigation for the commission of an offense. If one who has already been indicted is entitled to bail, there is no reason why another who has not yet been charged—and against whom a *prima facie* case has not yet been established—should be denied a similar right.[50]

There is in fact a new section in Rule 114 of the Rules of Court providing that "any person in custody who is not yet charged in court may apply for bail with any court in the province, city or municipality where he is held."

It is stressed that Section 13 has reversed *Garcia-Padilla v. Enrile*[51] by preserving the right to bail even if the privilege of the writ of *habeas corpus* has been suspended.

The exception applies to any offense which under the law existing at the time of its commission and at the time of the application for bail may be punished by *reclusion perpetua,* or death, even if a lesser penalty may be imposed upon conviction owing to mitigating circumstances that may be disclosed later.[51a] Nevertheless, the accused is still entitled to bail if, say, he is charged with murder and the evidence adduced by the prosecution at the hearing on the petition for bail indicates only a case of homicide.[52]

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[48] Rule 114, Sec. 1, Rules of Court.

[49] *Ibid.*

[50] Teehankee v. Rovira, 42 O.G. 717.

[51] *Supra.*

In the case of *Enrile v. Salazar*,[53] the petitioners were charged with rebellion with murder and multiple frustrated murder allegedly committed in connection with the failed *coup d'etat* that took place in late 1989. Arrested and detained without bail, they went to the Supreme Court and *inter alia* invoked *People v. Hernandez*,[54] which held that the crime of rebellion could not be complexed with murder. Simple rebellion is punished only with *prision mayor* and a P20,000.00 fine and is therefore bailable. The Court, after giving the petitioners provisional liberty pending resolution of the case, finally ruled that "based on the doctrine enunciated in the *Hernandez Case*, the questioned information filed against petitioners Juan Ponce Enrile and the spouses Rebecco and Erlinda Panlilio must be read as charging simple rebellion only; hence said petitioners are entitled to bail, before final conviction, as a matter of right."

A new provision in the Revised Rules of Court now states that "all persons in custody shall be entitled to bail as a matter of right except those charged with a capital offense or an offense which, under the law at the time of its commission and at the time of the application for bail, is punishable by *reclusion perpetua,* when the evidence of guilt is strong."[54a] This replaces the old rule that bail shall be demandable before conviction, but may be granted only in the discretion of the judge after conviction in the regional trial court.

[51a] People v. Marcos, 67 Phil. 83.

[52] Bernardez v. Valera, 4 SCRA 911.

[53] *Supra.*

[54] 99 Phil. 515.

[54a] Rule 114, Sec. 4, Rules of Court.

Even if the crime imputed to the accused is punishable by *reclusion perpetua,* he is still entitled to bail if the evidence of guilt is not strong. This does not have to be established by him; it is for the prosecution to prove the contrary, although it is not necessary at this point to prove guilt beyond reasonable doubt.[55]

In *People v. Cortez,*[56] the Supreme Court directed that where the accused is convicted of a capital offense or of an offense punishable by *reclusion perpetua,* his bail shall be canceled and he shall be placed in confinement pending the resolution of his appeal.

Hearing on the petition for bail is required to satisfy due process, but this may be summary in nature or held in the course of the trial itself. A separate hearing is not indispensable.[57]

It has been held that the mere probability of escape does not warrant denial of the right to bail; the remedy is to increase the bail, provided it is not excessive. But after conviction in the regional trial court, the accused may be denied bail if there is risk of his absconding.[58] The Supreme Court has also granted bail even when evidence of guilt of the prescribed offense was strong, in view of the illness of the accused which required his hospitalization.[59]

According to Rule 114, Section 6, of the Rules of Court, the judge, in fixing a reasonable amount of bail, should consider primarily, but not exclusively, the financial ability of the accused to give bail; the nature and circumstances of the offense; the penalty for the offense charged; the character and reputation of the accused; his age and health; the weight of the evidence against him; the probability of his appearing at the trial; the forfeiture of other bonds by him; the fact that he was a fugitive from justice when arrested; and the pendency of other cases in which he is under bond.

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[55] Pareja v. Gomez, 5 SCRA 823.

[56] G.R. No. 92560, Oct. 21, 1991.

[57] Gerardo v. CFI, 86 Phil. 504; Ocampo v. Bernabe, 77 Phil. 55.

[58] Zafra v. City Warden, 97 SCRA 771.

[59] De la Rama v. People's Court, 77 Phil. 461; People v. Sison, G.R. No. 398, Sept. 19, 1946.

These guidelines should be observed to prevent violation of the prohibition against excessive bail. If the court, while recognizing the defendant's right to bail, nevertheless frustrates it by requiring bail in such prohibitive amount as to be beyond his reach, the right becomes, in the words of Justice Jackson, "a teasing illusion like a munificent bequest in a pauper's will."

In the strange case of *De la Camara v. Enage*,[60] the accused was required by the lower court to post bail in the amount of P1, 195,200.00 to secure his temporary liberty pending his trial for multiple murder and multiple frustrated murder. This was a clear illustration of giving with one hand and taking with the other, for the defendant did not have the funds for the excessive bail required. No wonder he escaped.

In *Yap v. Court of Appeals*,[60a] the respondent court fixed bail for the appellant in the sum of P5,500,000, equivalent to his civil liability to the complainant as found by the trial court. Applying the rule against excessive bail, the Supreme Court reduced the amount to P200,000.00, saying that "bail is not intended as a punishment nor as in satisfaction of civil liability which should necessarily await the judgment of the appellate court."

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[60] 41 SCRA 3.

[60a] 358 SCRA 564.

The Court sustained the limitation on the appellant's right to travel, upon the showing that he had left the country several times during his trial and there was the possibility that he would escape abroad to avoid punishment.

Presumption of Innocence

> Sec. 14 (a). In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved. . . .

Accusation is not synonymous with guilt.[61] In this jurisdiction, the accused is presumed innocent until the contrary is proved. It is the responsibility of the prosecution to establish the defendant's guilt beyond reasonable doubt; otherwise he is entitled to acquittal. Conviction will depend not on the weakness of his defense but on the strength of the prosecution.

The person accused of an offense is confronted by the full panoply of State authority; in a manner of speaking, he goes to bat with all the bases loaded. It is important therefore, in the interest of justice, to even up the odds, as it were, by guaranteeing him certain rights during his trial. Chief among these is the constitutional presumption of innocence. Speaking of this guaranty, the Supreme Court declared in *People v. Malilay,*[62]

> The concern shown by this Court for the constitutional mandate as to the presumption of innocence to be fully adhered to, requiring that there be evidence sufficient to remove every vestige of reasonable doubt, was evident as early as United States v. Reyes, decided in 1903. Absolute certainty, as pointed out in the leading case of United States v. Lasada, promulgated in 1910, is not demanded by the law to convict of any criminal charge but moral certainty is required, and this certainty is required as to every proposition of proof requisite to constitute the offense. It is

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[61] People v. Dramayo, 42 SCRA 59.

[62] 63 SCRA 420.

> incumbent on the prosecution then, as was so well stressed in People v. Dramayo, to demonstrate that culpability lies. (Defendants are) not even called upon to offer evidence on their behalf. Their freedom is forfeit only if the requisite quantum of proof necessary for conviction be in existence.

In *People v. Sunga,*[63] a prosecution for rape, the Supreme Court held that although the defense of the appellant was weak, he nevertheless could not be convicted because of the constitutional presumption of innocence. The evidence of the prosecution was weaker.

In the *Dumlao Case,*[64] the challenged statute disqualified from running for local elective office "any person who has committed any act of disloyalty to the State... provided that the filing of charges for the commission of such crimes before a civil court or military tribunal after preliminary investigation shall be *prima facie* evidence of such fact." In striking down this provision, the Supreme Court declared through Justice Herrera:

> Explicit is the constitutional provision that, in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel (Article IV, Section 19, 1973 Constitution). An accusation, according to the fundamental law, is not synonymous with guilt. The challenged proviso contravenes the constitutional presumption of innocence, as a candidate is disqualified from running for public office on the ground alone that charges have been filed against him before a civil or military tribunal. It condemns before one is fully heard. In ultimate effect, except as to the degree of proof, no distinction is made between a person convicted of acts of disloyalty and one against whom charges have been filed for such acts, as both of them would be ineligible to run for public office. A person disqualified to run for public office on the ground that charges have been filed against him is virtually placed in the same category as a person already convicted of a crime with the penalty

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[63] 123 SCRA 327.

[64] *Supra.*

> of *arresto,* which carries with it the accessory penalty of suspension of the right to hold office during the term of the sentence (Art. 44, Revised Penal Code).
>
> And although the filing of charges is considered as but prima facie evidence, and therefore, may be rebutted, yet, there is 'clear and present danger' that because of the proximity of the elections, time constraints will prevent one charged with acts of disloyalty from offering contrary proof to overcome the *prima facie* evidence against him.
>
> Additionally, it is best that evidence *pro* and *con* of acts of disloyalty be aired before the Courts rather than before an administrative body such as the COMELEC. A highly possible conflict of findings between two government bodies to the extreme detriment of a person charged will thereby be avoided. Furthermore, a legislative/administrative determination of guilt should not be allowed to be substituted for a judicial determination.

And in *People v. Tempongko,*[65] the Supreme Court declared in absolving the accused:

> The theory of the prosecution has too many loose ends that it has failed to tie up to the satisfaction of this Court. The guilt of the appellant has not been established beyond doubt and so cannot be affirmed in this appeal. The defense is weak, to be sure, but for all the persuasive arguments of the Solicitor General and the private prosecutor, this Court remains unconvinced that the appellant raped the complainant. The appellant may have been lying, and there is evidence of this, but we are not prepared to accept, to the point of moral certainty, that the complainant was telling the truth. The ambiguous evidence of the prosecution cannot justify our condemning the appellant to prison for the rest of his life where there are whispers of doubt that he is guilty.

Nevertheless, the constitutional presumption of innocence may be overcome by contrary presumptions based on the experience of human conduct.[66] Unexplained flight, for example, may lead to an inference of guilt, as "the wicked flee when no man pursueth, but the righteous are as bold as a lion." Failure on the part of the accused to explain his possession of stolen property may give rise to the reasonable presumption that it was he himself who had stolen it.[67] Under our Revised Penal Code, the inability of an accountable officer to produce funds or property entrusted to him will be considered *prima facie* evidence that he has appropriated them to his personal uses.[68] According to Cooley, the constitutional presumption will not apply as long as there is "some rational connection between the fact proved and the ultimate fact presumed, and the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate."[69]

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[65] 144 SCRA 583.

[66] People v. Labara, April 20, 1954.

How about the presumption of regularity of official functions? The Supreme Court in *People v. Mirantes*,[70] said through Justice Regalado:

> The presumption of regularity in the performance of official functions cannot by itself affect the constitutional presumption of innocence enjoyed by an accused, particularly when the prosecution's evidence is weak. The evidence of the prosecution must be strong enough to pierce the shield of this presumptive innocence and to establish the guilt of the accused beyond reasonable doubt. Where the evidence of the prosecution is insufficient to overcome this presumption, necessarily, the judgment of conviction of the trial court must be set aside. The *onus probandi* on the prosecution is not discharged by casting doubts upon the innocence of an accused, but by eliminating all reasonable doubts as to his guilt.

And, as held in *Joseph v. Villaluz*,[71] "after the prosecution has adduced evidence, the constitutional presumption of innocence must yield to what has been so amply and persuasively demonstrated." Amplifying on this rule, the Court held in *People v. Regulacion*,[72] that it was incumbent on the accused, who had admitted the killing, to establish his case of self-defense instead of relying merely on the weakness of the prosecution.

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[67] U.S. v. Espia, 16 Phil. 506.

[68] Art. 217.

[69] 1 Cooley 639.

[70] 209 SCRA 179.

[71] 89 SCRA 665; People v. Sarmiento, 94 SCRA 944.

On the right to be silent, the Supreme Court said in *People v. Arciaga*[73] that "no inference of guilt may be drawn against an accused for his failure to make a statement of any sort. The neglect or refusal of the accused shall not in any manner prejudice or be used against him." But in the later case of *People v. Solis*,[74] it declared: "While accused have a right to be silent, they run the risk of an inference from the non-production of evidence." Failure or refusal of the accused to testify may prejudice him if the prosecution has already established a *prima facie* case against him, according to *People v. Resano*.[75]

It has also been held that the duty to apprise the accused of the right to be silent rests not with the court but with the defense counsel.[76]

Right to be Heard

> and shall enjoy the right to be heard by himself and counsel . . .

Already implicit in due process, the right of the accused to be heard by himself and counsel is still affirmed specifically in Section 14(2), presumably to give emphasis where added emphasis is due. Such a right is indispensable in any criminal prosecution where the stakes are the liberty or even the life of the accused, who must for this reason be given a chance to defend himself.

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[72] 121 SCRA 40.

[73] 99 SCRA 1.

[74] 128 SCRA 217.

[75] 132 SCRA 711.

[76] People v. Tampus, 96 SCRA 624.

In *People v. Lumague,*[77] the Supreme Court set aside the conviction of three co-accused after finding that they were denied due process because they had not been given a chance to testify and to present additional evidence on their behalf. The trial court was directed to receive such additional evidence and to allow the defendants to present sur-rebuttal evidence in case the prosecution should present rebuttal evidence.

(1) Assistance of Counsel

It has previously been observed that the right to counsel now begins from the time a person is taken into custody and placed under investigation for the commission of a crime.[78] Manifestly, this right becomes all the more important when he is already on trial and confronted by a skilled and experienced prosecutor. The intricacies of courtroom procedure are not within the knowledge of the ordinary layman, let alone one who is ignorant and unlettered. That is why the accused is entitled to be heard in his defense not only by himself but also with the assistance of counsel. A counsel *de oficio* shall be appointed for him if he cannot afford the services of a retained lawyer.

The right of the accused to counsel in criminal proceedings has never been considered subject to waiver.[79] This is because, according to Chief Justice Moran in *People v. Holgado:*[80]

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[77] 111 SCRA 515.

[78] People v. Lino, 196 SCRA 809.

[79] Flores v. Ruiz, 90 SCRA 429.

[80] 86 Phil. 752.

> In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own.

This rule is stressed in the case of the illiterate defendant with a modicum of intelligence who obviously cannot defend himself and will have to depend upon the assistance of counsel. A counsel *de oficio* should still, despite the objection of such accused, be appointed by the court to represent him.

The duty of the court is not ended with such appointment, as it should also see to it that the counsel does his duty by the defendant. Counsel *de oficio* should not merely make the motions of defending the accused but exert his utmost efforts as if he were representing a paying client. The Supreme Court has reversed convictions based on pleas of guilty made on advice of counsel *de oficio* presumably seeking to avoid the inconveniences of unremunerated services.[81] The judge in such cases should exercise extra care in informing the accused of his rights and the consequences of his plea of guilty and in ascertaining the presence of the different circumstances to be taken into account in the imposition of the proper penalty.[82]

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[81] People v. Hondolero, 72 SCRA 422; People v. Villafuerte, 56 SCRA 219.

Thus, in *People v. Magsi*,[83] Justice Makasiar chided the trial court for its *pro forma* appointment of a counsel *de oficio* who did not exert his best efforts for the protection of his non-paying client and its own failure to explain to the defendant the meaning of the accusation against him and the consequences of his plea of guilty. The judgment in this case was set aside and the case remanded to the court *a quo* for further proceedings.

In *People v. Malunsing*,[84] a defendant in a murder case manifested at the start of the trial that he had lost confidence in his former counsel and wanted to retain counsel *de parte.* Nevertheless, the court appointed the same lawyer as his counsel *de oficio.* Asked by the court if he wanted to confer with his client, counsel declined, saying "I think I know the case," and the case then proceeded to trial, during which no evidence was adduced in behalf of the defendant, unlike his co-accused who were actively represented by their lawyers. On appeal of his conviction, the Supreme Court remanded the case for new trial in view of the violation of the constitutional rights of the accused.

It should be noted, however, that the right to be silent and to the assistance of counsel may be waived during a custodial investigation under Article III, Sec. 12 (1). The right to counsel does not cease after trial, but continues even where the case is appealed.[85]

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[82] People v. Alde, 64 SCRA 224.

[83] 124 SCRA 69.

[84] 63 SCRA 493.

[85] People v. Rio, 201 SCRA 702.

Nature and Cause of Accusation

> to be informed of the nature and cause of the accusation against him . . .

The defendant is entitled to know the nature and cause of the accusation against him so he can adequately prepare for his defense. Obviously, he cannot do this if he has to guess at the charge that has been leveled against him because of the ambiguous language of the complaint or information.[86]

Accordingly, the Rules of Court provide that "whenever possible, a complaint or information should state the designation given to the offense by the statute, besides the statement of the acts or omissions constituting the same, and if there is no such designation reference should be made to the section or subsection of the statute punishing it."[86a]

Furthermore, "the acts or omissions complained of as constituting the offense must be stated in ordinary and concise language without repetition, not necessarily in the terms of the statute defining the offense, but in such form as is sufficient to enable a person of common understanding to know what offense is intended to be charged, and enable the court to pronounce proper judgment."[87]

The description and not the designation of the offense is controlling. Hence, even if there be an erroneous designation, the accused may be validly convicted of the crime described in the information.

Thus, in *Soriano v. Sandiganbayan,*[88] a prosecutor entrapped by the NBI was charged with and convicted of violating Section 3(b) of the Anti-Graft and Corrupt Practices Act. The Supreme Court agreed with him that the said law was inapplicable but rejected his submission that he could also not be convicted of bribery under the Revised Penal Code because this would violate his constitutional right to be informed of the nature and cause of the accusation against him. "Wrong," said Justice Abad Santos. "A reading of the information . . . clearly makes out a case of bribery."

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[86] People v. Mencias, 46 SCRA 88.

[86a] Rule 110, Sec. 8.

[87] *Ibid.,* Sec. 9.

[88] 131 SCRA 184.

In *People v. Ramirez,*[89] it was held that a person charged with rape, of which he was later absolved, could not be convicted of qualified seduction, which was not included in the information. A charge for the latter crime should be filed in which all the elements thereof, including the virginity of the victim, should be alleged, according to the later case of *People v. Quintal.*[90]

In *People v. Abino,*[90a] it was held that convicting the appellant of rape by intimidation under an information charging him with raping his daughter while she was "asleep and unconscious" would violate his constitutional right to be informed of the nature and cause of the accusation against him.

The charge of rape was not conclusively proved in *People v. Montes,*[91] but the trial court nevertheless sentenced the accused to life imprisonment plus civil damages for having "indirectly caused" the death of the complainant who had taken her life two days after the alleged incident. The Supreme Court observed that the judgment "may indicate that the accused was convicted of homicide. If this is so, the lower court is in grave error for he was never charged with said offense; he was accused of and tried for rape."

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[89] 69 SCRA 144.

[90] 125 SCRA 734.

[90a] 372 SCRA 50.

[91] 122 SCRA 409.

In *People v. Ortega*,[92] it was held that a person charged at his arraignment with homicide by drowning could not be convicted of homicide by stabbing, which was not the crime alleged in the information.

The defendant is also denied the right to be informed of the charge against him, and to due process as well, where the statute itself is couched in such indefinite language that it is not possible for men of ordinary intelligence to determine therefrom what acts or omissions are punished and, hence, should be avoided. This is the void-for-vagueness rule. Thus, a law imposing penalties upon a person for being a "gangster" is constitutionally flawed if it does not define the word with such reasonable specificity as to sufficiently inform the ordinary individual of its meaning and thus enable him to avoid violation of its provision.[92a] By contrast, it was held in *Gallego v. Sandiganbayan*[93] that the use of the words "unwarranted," "manifest partiality," "evident bad faith," and "gross inexcusable negligence," which all have definite connotations, did not make the Anti-Graft and Corrupt Practices Act invalid for vagueness.

In *Estrada v. Sandiganbayan*,[93a] the petitioner invoked the void-for-vagueness rule in questioning the Plunder Law which he claimed denied him the right to be informed of the nature and cause of the accusation against him because of its ambiguity in failing to define with precision certain words and phrase in many of its provisions. In an extended opinion, the Supreme Court rejected his challenge and declared *inter alia* through Justice Bellosillo.

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[92] 276 SCRA 166.

[92a] Lanzetta v. New Jersey, 306 U.S. 451.

[93] 115 SCRA 793.

[93a] 369 SCRA 394.

> The test in determining whether a criminal statute is void for uncertainty is whether the language conveys a sufficiently definite warning as to the proscribed conduct when measured by common understanding and practice. It must be stressed, however, that the "vagueness" doctrine merely requires a reasonable degree of certainty for the statute to be upheld—not absolute precision or mathematical exactitude, as petitioner seems to suggest. Flexibility, rather than meticulous specificity is permissible as long as the metes and bounds of the statute are clearly delineated. An act will not be held invalid merely because it might have been more explicit in its wordings, or detailed in its provision. Especially where, because of the nature of the act, it would be impossible to provide all the details as in all other statutes.

The charge is communicated to the accused during the arraignment, which is an indispensable part of the proceedings against him. On the importance of this step, the Court had the following to say:

> Nor is it only the due process guarantee that calls for the accused being duly arraigned. As noted, it is at that stage where, in the mode and manner required by the Rules, an accused for the first time is granted the opportunity to know the precise charge that confronts him. It is imperative that he is thus made fully aware of possible loss of freedom, even of his life, depending on the nature of the crime imputed to him. At the very least then, he must be fully informed of why the prosecuting arm of the state is mobilized against him. An arraignment served that purpose. Thereafter, he is no longer in the dark. It is true, the complaint or information may not be worded with sufficient clarity. He would be in a much worse position though if he does not even have such an opportunity to plead to the charge. With his counsel by his side, he is thus in a position to enter his plea with full knowledge of the consequences. He is not even required to do so immediately. He may move to quash. What is thus evident is that an arraignment assures that he be fully acquainted with the nature of the crime imputed to him and the circumstances under which it is allegedly committed. It is thus a vital aspect of the constitutional

> rights guaranteed him. It is not useless formality, much less an idle ceremony.[94]

In *People v. Crisologo*,[95] a deaf-mute was accused of robbery with homicide, but arraignment was deferred for six years because there was no sign language expert to assist him. Finally waiving the reading of the information, he was tried, still without the assistance of a sign language expert, and was eventually convicted. The Supreme Court reversed, declaring through Justice Teodoro Padilla:

> The absence of a qualified interpreter in sign language and of any other means, whether in writing or otherwise, to inform the accused of the charges against him denied the accused his fundamental right to due process of law. The accuracy and fairness of the factual process by which the guilt or innocence of the accused was determined was not safeguarded. The accused could not be said to have enjoyed the right to be heard by himself and counsel, and to be informed of the nature and cause of the accusation against him in the proceedings where his life and liberty were at stake.

A similar ruling was made in *People v. Parazo*,[96] where a deaf-mute and mental retardate could not adequately defend himself at the trial for lack of a qualified sign language expert or any other means to communicate to him the crime he was alleged to have committed. His conviction was reversed and the case remanded to the lower court for re-trial.

The Trial

> to have a speedy, impartial and public trial. . .

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[94] Borja v. Mendoza, *infra*.

[95] 150 SCRA 653 (1987).

[96] 310 SCRA 146.

The original Constitution required the trial of the accused to be only public and speedy. The new Bill of Rights provides that it also be impartial as an added guaranty of due process of law.

It has been previously remarked that this requirement will call for no less than "the cold neutrality of an impartial judge,"[96a] to insure that justice is done to the defendant. In another case, it was held as part of the rule that the judge must not only be impartial but must also appear to be impartial.[97]

In *Ignacio v. Villaluz,*[98] the respondent judge had previously convicted the petitioner of arson, holding that the motive for the crime was to conceal the acts of malversation committed by the accused. When he was subsequently prosecuted for malversation before the same judge, the petitioner moved for the latter's disqualification on the ground that he could not be expected to be objective and impartial in the trial of this case. The judge denied the motion, and the petitioner went on *certiorari* to the Supreme Court, where he was sustained. "It is difficult to understand the reluctance of respondent judge to inhibit himself," observed Justice Teehankee. "In a case where he was named respondent, *Mateo v. Villaluz,* decided in 1973, this Court laid down the principle: 'It is now beyond dispute that due process cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and just.' "

In *People v. Opida,*[99] the conviction was reversed after the Court found that the trial judge was biased and had obviously prejudged the accused because of their appearance and criminal record. The decision stressed:

[96a] Gutierrez v. Santos, *supra.*

[97] Fernandez v. Presbitero, 79 SCRA 61.

[98] 90 SCRA 16.

[99] 142 SCRA 295.

> The scales of justice must hang equal and, in fact, should even be tipped in favor of the accused because of the constitutional presumption of innocence. Needless to stress, this right is available to every accused, whatever his present circumstance and no matter how dark and repellent his past. Despite their sinister connotations in our society, tattoos are at best dubious adornments only and surely not under our laws indicia of criminality. Of bad taste perhaps, but not of crime.
>
> In any event, convictions are based not on the mere appearance of the accused but on his actual commission of crime, to be ascertained with the pure objectivity of the true judge who must uphold the law for all without favor or malice and always with justice.

Publicity of the trial is necessary to prevent abuses that may be committed by the court to the prejudice of the defendant. The people have a right to attend the proceedings not only because of their interest therein but also so they can see whether or not the constitutional safeguards for the benefit of the accused are being observed. The accused is also entitled to the company of his relatives and friends to give him the moral support he needs during his ordeal.

This rule is not absolute, however, for it is competent for the court to bar the public in certain cases, like rape trials, where the purpose of the spectators in attending the proceedings might be only to pander to their morbid curiosity, more so since their presence is likely to inhibit testimony and embarrass some of the parties.

A speedy trial has been defined as "one free from vexatious, capricious and oppressive delays"[100] and is intended to relieve the accused of needless anxieties and inconveniences before sentence is pronounced upon him. This would also be consonant with Section 16 of the Bill of Rights providing that *"all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies."*

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[100] Flores v. People, 61 SCRA 331.

In the old case of *Conde v. Rivera,*[101] the Supreme Court dismissed all charges against an accused who was required to "dance attendance on courts" and subjected to a number of unjustified postponements that resulted in unconscionable delay of her trial. Justice Malcolm declared:

> Aurelia Conde, formerly a municipal midwife in Lucena, Tayabas, has been forced to respond to no less than five informations for various crimes and misdemeanors, has appeared with her witnesses and counsel at hearings no less than on eight different occasions only to see the case postponed, has twice been required to come to the Supreme Court for protection, and now, after the passage of more than one year from the time when the first information was filed, seems as far away from a definite resolution of her troubles as she was when originally charged.
>
> Philippine organic and statutory law expressly guarantee that in all criminal prosecutions the accused shall enjoy the right to have a speedy trial. Aurelia Conde, like all other accused persons, has a right to a speedy trial in order that if innocent she may go free, and she has been deprived of that right in defiance of law. Dismissed from her humble position, and compelled to dance attendance on courts while investigations and trials are arbitrarily postponed without her consent, is palpably and openly unjust to her and a detriment to the public. By the use of reasonable diligence, the prosecution could have settled upon the appropriate information, could have attended to the formal preliminary examination, and could have prepared the case for a trial free from vexatious, capricious, and oppressive delays.
>
> Once before, as intimated, the petitioner had to come to us for redress of her grievances. We thought then we had pointed out the way for the parties. But it seems not. Once again therefore and finally, we hope, we propose to do all in our power to assist this

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[101] 45 Phil. 650.

> poor woman to obtain justice. On the one hand has been the petitioner, of humble station, without resources, but fortunately assisted by a persistent lawyer, while on the other hand has been the Government of the Philippine Islands which should be the last to set an example of delay and oppression in the administration of justice. The Court is thus under a moral and legal obligation to see that these proceedings come to an end and that the accused is discharged from the custody of the law.
>
> We lay down the legal proposition that, where a prosecuting officer, without good cause, secures postponements of the trial of a defendant against his protest beyond a reasonable period of time, as in this instance for more than a year, the accused is entitled to relief by a proceeding in *mandamus* to compel a dismissal of the information, or if he be restrained of his liberty, by *habeas corpus* to obtain his freedom. (16 C.J. 439 *et seq.;* In the matter of Ford [1911], 160 Cal., 334; *U.S. vs. Fox* [1880], Montana, 512. See further our previous decision in *Conde vs. Judge of First Instance, Fourteenth Judicial District, and the Provincial Fiscal of Tayabas,* No. 21236.)

In the case of *Flores v. People,*[102] the accused were charged with robbery in 1951, appealed their conviction in 1955 to the Court of Appeals, which did not act until 1958, when it remanded the case to the lower court for a rehearing, and in 1959 set aside the decision so a trial could be held to receive additional evidence for the defendants. Nothing was done for about a year despite six or seven scheduled hearings which were not held because of the absence of the offended party. Instead of rendering a new decision, the lower court returned the records of the Court of Appeals, and five more years elapsed without anything being done. The accused moved to dismiss the case in 1965 and when their second motion for reconsideration was denied by the Court of Appeals in 1966, or a decade and a half since they were impleaded, went to the Supreme Court. They were finally discharged in 1974 on the strength of their constitutional right to a speedy trial. Interestingly, the Supreme Court itself took eight years to decide.

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[102] *Supra.*

In *Cojuangco v. Sandiganbayan*,[103] the Supreme Court held that the respondent court's delay of more than one year in resolving the petitioner's motion to dismiss the charges against him violated the right to a speedy trial, considering that all pertinent pleadings required by the Sandiganbayan had already been submitted.

In *Padilla v. Apas*,[103a] it was held that "since the prosecution, by repeated motions for postponement, caused the delay of the proceedings from the time the information was filed on February 28, 1996, from which time the test of the violation of the right to a speedy trial is to be counted, the dismissal of the case, on motion of the accused, amounts to an acquittal." The dismissal of the case by the trial court on March 22, 2000 was affirmed by the Supreme Court.

It should be remembered, however, that in *Amberti v. Court of Appeals*,[103b] Justice Teehankee gave the following significant reminder:

> The Court has consistently maintained that although a speedy determination of an action implies a speedy trial, speed is not the chief objective of a trial. Careful and deliberate consideration for the administration of justice, a genuine respect for the rights of all parties and the requirements of procedural due process and an adherence to the Court's standing admonition that the discretion granted judges in the granting or denial of motions for postponement and the setting aside or denial of orders previously issued 'should always be predicated on the consideration that more than the mere convenience of the courts or of the parties in the

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[103] 300 SCRA 367.

[103a] 487 SCRA 29.

[103b] 89 SCRA 240.

> case, the ends *of justice* and *fairness* would be served thereby' are more important than a race to end the trial.

Moreover, as held in *Martin v.* Ver,[104] the right to a speedy trial, which begins from the filing of the information, cannot be quantified into a specified number of days or months but must be examined in the light of surrounding circumstances such as, in that case, the unavailability of witnesses.

Although the trial is an indispensable and, indeed, the most important part of the proceedings against the accused, it has been held that the right to be present thereat is a personal right and therefore may be validly waived. This was the rule announced in *Aquino v. Military Commission No. 2,*[105] where the petitioner was sustained in his refusal to be present at his own trial, which he claimed was a mere mockery because his conviction had already been pre-ordained. As the Supreme Court put it:

> Considering the aforecited provisions of the Constitution, that 'after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified,' and the absence of any law specifically requiring his presence at all stages of his trial, there appears, therefore, no logical reason why petitioner, although he is charged with a capital offense, should be precluded from waiving his right to be present in the proceedings for the perpetuation of testimony, since this right, like the others aforestated, was conferred upon him for his protection and benefit. It is also important to note that under Section 7 of Rule 119 of the Revised Rules of Court (Deposition of witness for the prosecution) the 'Failure or refusal on the part of the defendant to attend the examination or the taking of the deposition after notice hereinbefore provided, shall be considered a waiver . . .' Similarly, Presidential Decree No. 328 expressly provides that'. . . the failure or refusal to attend the ex-

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[104] 123 SCRA 745.

[105] 63 SCRA 546.

amination or the taking of the deposition shall be considered a waiver.'

Nonetheless, the basic rule was made subject to the qualification that the presence of the accused may be required if it is necessary for purposes of identification, that is, where the prosecution intends to introduce witnesses who will identify him. This doctrine was affirmed in the cases of *People v. Presiding Judge*[106] and *People v. Macaraeg.*[107]

In *People v. Dichoso,*[108] the hearings for the presentation of the evidence for the accused were reset no less than eleven times on motion of the defense. On the twelfth scheduled hearing, the defense counsel manifested that if his client did not again appear he would submit the case without presenting any evidence. The accused did not show up and counsel did as promised. The accused was convicted and through new counsel questioned the sentence on the ground that she had been deprived of her right to be heard. The Supreme Court ruled that she had by her repeated failure to attend the hearings waived her right to the trial, adding that "speedy justice is as much a prerogative of an Accused as of Complainant."

The right to be present at the trial may also be validly waived under the new rule allowing trial *in absentia,* discussed below.

(1) Trial in Absentia

Previously, when in the course of his trial the defendant escaped or otherwise failed or refused to appear, the same was suspended because of the requirement that he be present at certain stages thereof, as announced in the old case of *People v. Avanceña.*[109] That case was modified in *Aquino v. Military Commission No. 2*[110] and is also deemed qualified by Section 14(2), which says that *"after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."*

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[106] 125 SCRA 269.
[107] 141 SCRA 37.
[108] 96 SCRA 957.

The requisites of trial *in absentia* are: (1) the accused has already been arraigned; (2) he has been duly notified of the trial; and (3) his failure to appear is unjustified.

In *People v. Salas,*[111] the Supreme Court declared:

> The purpose of this rule is to speed up the disposition of criminal cases, trial of which could in the past be indefinitely deferred, and many times completely abandoned, because of the defendant's escape. The old case of People v. Avanceña required his presence at certain stages of the trial which as a result, had to be discontinued as long as the defendant had not reappeared or remained at large. As his right to be present at these stages was then held not waivable even by his escape, such escape thus operated to the fugitive's advantage, and in mockery of the authorities, insofar as the trial could not proceed as long as he had not been recaptured.
>
> The doctrine laid down in that case has been modified by Section 19, which now allows trial *in absentia.* Now, the prisoner cannot by simply escaping thwart his discontinued prosecution and possible eventual conviction provided only that: a) he has been arraigned; b) he has been duly notified of the trial; and c) his failure to appear is unjustified.
>
> The respondent judge was probably still thinking of the old doctrine when he ruled that trial *in absentia* of the escapee could not be held because he could not be duly notified under Section 19. He forgets that the fugitive is now deemed to have waived such notice precisely because he has escaped, and it is also this escape that makes his failure to appear at his trial unjustified. Escape can never be a legal justification. In the past, his escape 'rewarded'

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[109] 32 O.G. 713.

[110] *Supra.*

[111] 143 SCRA 163.

> him by postponing all further proceedings against him and in effect ultimately absolving him of the charge he was facing. Under the present rule, his escape will, legally speaking, operate to his disadvantage by preventing him from attending his trial, which will continue even in his absence and most likely result in his conviction.
>
> The right to be present at one's trial may now be waived except only at that stage where the prosecution intends to present witnesses who will identify the accused. Under Section 19, the defendant's escape will be considered a waiver of this right and the inability of the court to notify him of the subsequent hearings will not prevent it from continuing with his trial. He will be deemed to have received due notice. The same fact of his escape will make his failure to appear unjustified because he has, by escaping, placed himself beyond the pale, and protection, of the law.

In *Borja v. Mendoza*,[112] a judgment of conviction was set aside by the Supreme Court when it appeared *inter alia* that the accused had been tried and convicted in his absence before he had been formally arraigned. The Court declared:

> The provision in the present Constitution allowing trial to be held *in absentia* is unavailing. It cannot, justify the actuation of respondent Judge Senining. Its language is clear and explicit. What is more, it is mandatory. Thus: However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustified.' As pointed out then by the Solicitor General, the indispensable requisite for trial *in absentia* is that it should come 'after arraignment.' The express mention in the present Constitution of the need for such a step emphasizes its importance in the procedural scheme to accord an accused due process.

Trial *in absentia* does not, however, abrogate the provisions of the Rules of Court regarding forfeiture of the bail bond if the accused fails to appear at his trial.[113] In

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[112] 77 SCRA 422.

[113] Rule 114, Sec. 18.

People v. Prieto,[114] the trial court reconsidered its original order and deferred confiscation of the bail bond of the accused, who had already gone abroad and could not attend his trial, as being premature until judgment of conviction shall have been rendered. In granting the petition for *certiorari,* the Supreme Court declared:

> There is no justification in law, therefore, for such valid and correct order being reconsidered, just because of the innovation in the Constitution as to the trial being held in the absence of an accused. Respondent judge unfortunately assumed that thereby a defendant was thus conferred a fundamental right to ignore the terms of the bond posted by him in accordance with his constitutional right to bail. The present Constitution certainly has not made a dent on the traditional and correct concept of a bail as given to allow the release of a person in the custody of the law on condition that he would appear before any court whenever so required. Upon failure to do so, the warrant of arrest previously issued can be a sufficient justification for his confinement. All that is assured an accused who posts bail, therefore, is that prior to his conviction, he need not be deprived of his liberty. The mere fact that the trial could not continue in his absence certainly affords no justification for his jumping bail nor for his bondsmen to escape from the legal effects of their undertaking.

In *Manotoc v. Court of Appeals,*[115] a person granted bail while facing estafa charges wanted to leave for abroad to attend to certain business matters. Permission having been denied, he went to the Supreme Court, where the denial was sustained. "A court has the power to prohibit a person admitted to bail from leaving the Philippines," declared Justice Fernan, as "this is a necessary consequence of the nature and function of a bail bond. . . Indeed, if the accused were allowed to leave the Philippines without sufficient reason, he may be placed beyond the reach of the courts."

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[114] 84 SCRA 198.

[115] 142 SCRA 149.

The Right of Confrontation

to meet the witnesses face to face. . .

In *United States v. Javier,*[116] The Supreme Court, quoting from an American decision,[117] declared that the right to confrontation "intends to secure the accused in the right to be tried, so far as facts provable by witnesses are concerned, by only such witnesses as meet him face to face at the trial, who give their testimony in his presence, and give to the accused an opportunity of cross-examination. It was intended to prevent conviction of the accused upon deposition or *ex parte* affidavits, and particularly to preserve the right of the accused to test the recollection of the witness in the exercise of the right of cross-examination."

Thus, in *People v. Ramos,*[118] an affidavit implicating the accused as a drug pusher was rejected as mere hearsay by the Supreme Court because the affiant had not been presented in court and so could not be cross-examined by the defense. The decision was also annulled in *Combate v. San* Jose[119] for convicting the accused on mere affidavits and denying him the right to counsel, to trial, and to cross-examine the affiants.

It may be added that normally there is less propensity to lie on the part of a witness when actually confronted by the accused than when the testimony is given behind his back. Furthermore, the presence of the witness at the trial will enable the court to observe his demeanor and gauge the credibility of his testimony.

Save in the cases provided in the Rules of Court, like the dying declaration, the testimony of the witness against the accused is subject to cross-examination by defense counsel. Depositions and *ex parte* affidavits are inadmissible unless the persons making them are presented in court for examination on their statements by the judge and the accused. Evidence of this nature is hearsay and excluded by the Rules of Court.

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[116] 37 Phil. 449.

[117] Dowdell v. U.S., 22 U.S. 325.

[118] 122 SCRA 312.

[119] 135 SCRA 693.

In *People v. Liwanag*,[120] the accused objected to the inclusion in the evidence for the prosecution of testimony adduced against him during the preliminary investigation. As it appeared, however, that the witnesses were subjected to cross-examination then, and later also at the trial, the Supreme Court held that there was no violation of the right of confrontation.

But in *Talino v. Sandiganbayan*,[121] the Supreme Court reiterated the rule that where several co-accused are given a separate trial, the evidence given against them at the other trial where they had no opportunity to cross-examine the witnesses is not admissible against them.

It has also been held that if a prosecution witness dies before his cross-examination can be completed, his direct testimony cannot be stricken off the record, provided the material points of his direct testimony had been covered on cross.[122]

Of special interest is *Tampar v. Usman*,[123] where the following observations were made:

> The Court shares the concern of petitioners in the use of the "yamin" in this proceeding, and for that matter, before Philippine Shari'a courts. Section 7 of the Special Rules of Procedure prescribed for Shari'a courts aforecited provides that if the plaintiff

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[120] 73 SCRA 473. See also People v. Villaluz, 125 SCRA 115.

[121] 148 SCRA 598 (1987).

[122] People v. Seneres, 99 SCRA 92; see also People v. Gorospe, 129 SCRA 233.

[123] 200 SCRA 652 (1991).

> has no evidence to prove his claim, the defendant shall take an oath and judgment shall be rendered in his favor by the Court. On the other hand, should defendant refuse to take an oath, plaintiff may affirm his claim under oath, in which case judgment shall be rendered in his favor.
>
> Said provision effectively deprives a litigant of his constitutional right to due process. It denies a party his right to confront the witnesses against him and to cross-examine them. It should have no place even in the Special Rules of Procedure of the Shari'a courts of the country.

Compulsory Process

> and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf.

The accused is entitled under the Constitution to the issuance of *subpoena* and *subpoena duces tecum* for the purpose of compelling the attendance of witnesses and the production of evidence that he may need for his defense. Failure to obey the process is punishable as contempt of court; if necessary, the witness may even be arrested so he can give the needed evidence.

In *People v. Bardaje*,[124] a witness was subpoenaed on request of the accused but instead of taking steps to compel her attendance, the judge held the defense responsible for bringing her to the trial, stating that her testimony would be dispensed with if she failed to appear. The Supreme Court considered this a denial of the right of the accused to compulsory process.

But in *Fajardo v. Garcia*,[125] the Supreme Court sustained the refusal of the trial court to grant leave to serve written interrogatories on a doctor who had already left for abroad, it appearing that the medical evidence of the injuries sustained by the victim could be adduced through other witnesses and hospital records.

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[124] 99 SCRA 388.

[125] 99 SCRA 514.

In exceptional circumstances, the defendant may even ask for the conditional examination, provided the expected testimony is material, of any witness who is "so sick or infirm as to afford reasonable ground for believing that he will not be able to attend the trial, or resides more than one hundred kilometers from the place of trial and has no means to attend the same, or that, apart from the foregoing, other similar circumstances exist that would make him unavailable or prevent him from attending the trial."[126] He is also entitled to employ the various methods of discovery allowed under the Rules of Court, like letters rogatory and written interrogatories.

This right to compulsory process must be invoked during the trial. Failure to do so constitutes a waiver that cannot be rectified or undone on appeal.[127]

Prohibited Punishments

> Sec. 19. (1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall the death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already disposed shall be reduced to *reclusion perpetua.*
>
> (2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.

The old prohibition against "cruel or unusual punishment" has been rewritten to cover *"cruel, degrading or inhuman punishment"* to make the provision more comprehensive in line with the emphasis on the protection of human rights in Article XIII of the Constitution.

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[126] Rule 119, Sec. 4, Rules of Court.

[127] United States v. Garcia, 10 Phil. 384.

Mere fines and imprisonment are not violative of the above sections. To be so, the penalty must be inhuman and barbarous and shocking to the conscience,[128] like the garrote, the thumbscrew, the rack, burning at the stake and crucifixion. Cruelty must be inherent in the penalty, as in whipping at the post. Torture is a cruel punishment because it involves a deliberate design to increase the suffering of the prisoner in a manner so flagrant and oppressive as to revolt the moral sense of the community.

But where an unforeseeable accident adds to the suffering of the convict, a penalty otherwise valid does not become cruel or unusual. Thus, in *Louisiana v. Resweber,*[129] a mechanical failure in the electric chair prevented the execution of the petitioner, and another execution was scheduled by the warden. The convict protested, claiming that he was being subjected to a cruel and unusual punishment as he would again be required to undergo the psychological strain of preparing for his death, an ordeal he had previously suffered when the first electrocution failed. The U.S. Supreme Court denied his plea, ruling that there was "no purpose to inflict unnecessary pain nor any unnecessary pain involved in the proposed execution. The situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of mental anguish and physical pain in any other occurrence, such as, for example, a fire in the cell block."

Where a prostitute is required to go naked in public in expiation for her crime or a thief to wear a stigmatizing emblem of his calling, the punishment is certainly degrading and inhuman. And although sustained by the

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[128] People v. Dionisio, 22 SCRA 1299.

[129] 329 U.S. 459.

Supreme Court in earlier decisions,[130] the death sentence is not allowed except as a penalty for heinous offenses as now provided in R.A. No. 7659. All death sentences pending on February 2, 1987, were automatically reduced to *reclusion perpetua.*

The death penalty as restored under the said law has also been sustained by the present Supreme Court in *Echegaray v. Secretary of Justice*[131] and *People v. Tongko.*[131a]

> Any infliction of pain in lethal injection is merely incidental in carrying out the death penalty and does not fall within the constitutional proscription against cruel, degrading or inhuman punishment. In a limited sense, anything is cruel which is calculated to give pain or distress, and since punishment imports pain or suffering to the convict, it may be said that all punishments are cruel. But of course the Constitution does not mean that crime, for this reason, is to go unpunished.' The cruelty against which the Constitution protects a convicted man is cruelty inherent in the method of punishment, not the necessary suffering involved in any method employed to extinguish life humanely.

In *People v. Dionisio,*[131b] the Supreme Court held that mere severity does not constitute cruel and unusual punishment. Reiterating the rule first announced in *People v. Estoista,*[132] it declared that "it takes more than merely being harsh, excessive, out of proportion, or severe for a penalty to be obnoxious to the Constitution. . . to come under the ban, the punishment must be 'flagrantly and plainly oppressive,' 'wholly disproportionate to the nature of the offense as to shock the moral sense of the community.'"

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[130] Harden v. Director of Prisons, 81 Phil. 741; People v. Camano, 115 SCRA 688.

[131] 297 SCRA 754.

[131a] 290 SCRA 595.

[131b] 22 SCRA 1299.

[132] 93 Phil. 674.

Such a penalty would be violative of still another constitutional guaranty, *viz.,* the due process clause, which requires an equivalence between the degree of the offense and the degree of the penalty. For a serious crime, a heavy penalty is justified, such as death for murder; but surely such a penalty cannot be constitutionally imposed for a minor offense like jaywalking or littering. Only a light punishment is allowed in these cases.

In the *Generics Act Case,*[133] the petitioners also questioned the penalties prescribed for violation of the law, to wit, from a reprimand to a fine of not more than P10,000.00 and the suspension of the physician's license for one year or longer in the discretion of the court. The Supreme Court held:

> Petitioners' allegation that these penalties violate the constitutional guarantee against excessive fines and cruel and degrading punishment, has no merit. Penal sanctions are indispensable if the law is to be obeyed. They are the "teeth" of the law. Without them, the law would be toothless, not worth the paper it is printed on, for physicians, dentists and veterinarians may freely ignore its prescriptions and prohibitions. The penalty of suspension or cancellation of the physician's license is neither cruel, inhuman or degrading. It is no different from the penalty of suspension or disbarment that the Supreme Court inflicts on lawyers and judges who misbehave or violate the laws and the Codes of Professional and Judicial Conduct.

These principles notwithstanding, it has been held that a penalty not normally proportionate to the offense may be imposed in some instances without violation of the Constitution. This would be allowed, for example, where the offense has become so rampant as to require the adoption of a more effective deterrent, like the punishment of the stealing of jeeps or coconuts by the Revised Penal Code as qualified theft.

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[133] *Supra.*

In *People v. De la Cruz,*[134] the penalty of five years imprisonment and a fine of P5,000.00 imposed upon a person convicted of profiteering was sustained by the Supreme Court as not a cruel punishment in view of the national policy against the offense, which was especially hurtful to the consuming public and the national economy. And in the *Dionisio Case,* the Supreme Court affirmed a penalty of one month imprisonment imposed upon a "bookie," declaring through Justice J.B.L. Reyes:

> What evils should be corrected as pernicious to the body politic, and how correction should be done, is a matter primarily addressed to the discretion of the legislative department, not the courts; and the view that unsupervised gambling is definitely detrimental to the nation and its citizens counts with respectable support. The hope of large or easy gain, obtained without special effort, turns the head of the workman, and habitual gambling is a cause of laziness and ruin.' (Planiol, Droit Civil, Vol. 2, No. 2210) The social scourge of gambling must be stamped out. The laws against gambling must be enforced to the limit.' (People v. Gorostiza, 77 Phil. 88)

The above observations are also applicable to the prohibition against the imposition of excessive fines. In this connection, it should be borne in mind that this prohibition is addressed not only to the legislature but also to the judge who, in the determination of the fine to be imposed (within the range allowed by law), must take into account the financial condition of the convict, to prevent the fine from becoming excessive, and also discriminatory.

Thus, Article 66 of the Revised Penal Code provides that "in imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case, attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit." And interpreting this provision in the case of *People v. Ching Kuan*,[135] Justice Ozaeta spoke for the Supreme Court as follows:

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[134] 92 Phil. 906.

> It may seem paradoxical, but the truth is that the codal provision in question, in authorizing the imposition of unequal fines, aims precisely at equality before the law. Since a fine is imposed as penalty and not as payment for a specific loss or injury, and since its lightness or severity depends upon the culprit's wealth or means, it is only just and proper that the latter be taken into account in fixing the amount. To an indigent laborer, for instance, earning P1.50 a day or about P36 a month, a fine of P10 would undoubtedly be more severe than a fine of P100 to an officeholder or property owner with a monthly income of P600. Obviously, to impose the same amount of a fine for the same offense upon two persons thus differently circumstanced would be to mete out to them a penalty of unequal severity and, hence, unjustly discriminatory.

The Commission on Human Rights is especially entrusted with the enforcement of the prohibition in Subsection 2, which, to be really effective, must be provided with "teeth" through the enactment of a law imposing the necessary sanctions upon those violating the rule. Appropriations should also be provided for the improvement of the facilities of penal institutions.

Double Jeopardy

> Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

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[135] 74 Phil. 23.

Fittingly described as *"res judicata* in prison grey," the right against double jeopardy prohibits the prosecution again of any person for a crime of which he has previously been acquitted or convicted. The object is to set the effects of the first prosecution forever at rest, assuring the accused that he shall not thereafter be subjected to the dangers and anxiety of a second charge against him for the same offense. As the Supreme Court put it in *People v. Ylagan:*[136]

> Without the safeguard this article establishes in favor of the accused, his fortune, safety and peace of mind would be entirely at the mercy of the complaining witness, who might repeat his accusation as often as dismissed by the court and whenever he might see fit, subject to no other limitation or restriction than his own will and pleasure. The accused would never be free *from* the cruel and constant menace of a never-ending charge, which the malice of the complaining witness might hold indefinitely suspended over his head.

Implementing the constitutional provision, Rule 117, Section 7, of the Rules of Court provides as follows:

> When an accused has been convicted or acquitted, or the case against him has been dismissed or otherwise terminated without his express consent, by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction, and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

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[136] 58 Phil. 851.

(1) Requisites

It has been held in a long line of cases that to constitute double jeopardy, there must be: (1) a valid complaint or information; (2) filed before a competent court; (3) to which the defendant had pleaded; and (4) of which he had been previously acquitted or convicted or which was dismissed or otherwise terminated without his express consent.[137]

A. Complaint or Information

A prosecution based on an invalid complaint or information cannot lead to a valid judgment and hence will not place the accused under jeopardy. Thus, an information filed by the prosecutor for concubinage is null and void and can be dismissed; and the same charge embodied in a complaint filed by the offended spouse can be later instituted without placing the accused in double jeopardy. Where the original information is defective and the case is dismissed on motion of the accused, it may be validly renewed with the filing of a corrected information. But if, without the express consent of the accused, the information is dismissed on the ground that it is defective when it is not so in fact, another prosecution based on the same allegation will constitute double jeopardy.[138]

B. Competent Court

Obviously, a court without jurisdiction cannot render a valid judgment; hence, a person charged before it cannot plead double jeopardy when tried anew for the same offense by a competent court, as the first prosecution never placed him in jeopardy.[139] In the case of *People v. Galano*,[140] for example, a prosecution for estafa was dismissed by the court of first instance of Batangas for lack of territorial jurisdiction. Subsequently, a charge for the same offense was commenced in the court of first instance of Manila and the accused moved to quash, invoking double jeopardy. The Supreme Court held that the defense was not available because the defendant had not been in danger of conviction in the original prosecution.

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[137] People v. Ylagan, *supra;* People v. Obsania, *infra;* People v. City Court of Silay, *infra.*

[138] U.S. v. Yam Tung Way, 21 Phil. 67.

In *People v. Brecinio*,[141] the accused was convicted of stealing a carabao by a municipal court in which, however, the proceedings were not recorded. The decision was appealed to the court of first instance which, in the exercise of its concurrent original jurisdiction, convicted the accused anew. The defendant challenged this second conviction, claiming that it had placed him in double jeopardy. The Supreme Court sustained the court of first instance, holding that since the proceedings in the municipal court were totally void for lack of record, double jeopardy could not attach. Double jeopardy, Justice Abad Santos said, requires 'Valid previous proceedings."

Where a court martial and a civil court have concurrent jurisdiction, a decision by one court will bar another prosecution for the same offense in the other court.[142] And where an information is *motu proprio* dismissed for lack of jurisdiction by a court which is actually competent to hear it, the dismissal will inure to the benefit of the accused, who is entitled to plead double jeopardy.[143]

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[139] De Guzman v. Escalona, 98 SCRA 619.

[140] 75 SCRA 193.

[141] 125 SCRA 182.

[142] Crisologo v. People, 94 Phil. 477.

[143] U.S. v. Regala, 28 Phil. 57; People v. Obsania, *infra*.

In *Olaguer v. Military Commission,*[144] it was held that the military tribunals had no jurisdiction to try cases of civilians, which fell under the competence of the ordinary civil courts even during the period of martial law. The judgments of the military tribunals in these cases were, therefore, invalidated and the petitioners released. Taking this ruling into account in the subsequent case of *Cruz v. Enrile,*[145] the Supreme Court declared:

> No breach of constitutional prohibition against twice putting an accused in jeopardy of punishment for the same offense would result from the retrial of petitioners' cases, for the simple reason that the absence of jurisdiction of the courts martial to try and convict petitioners prevented the first jeopardy from attaching. Valid previous proceedings are required in order that the defense of double jeopardy can be raised by the accused in the second proceeding.

However, this doctrine was moderated in *Tan v. Barrios,*[146] thus:

> In the interest of justice and consistency, we hold that *Olaguer* should, in principle, be applied prospectively only to future cases and cases still ongoing or not yet final when that decision was promulgated. Hence, there should be no retroactive nullification of final judgments, whether of conviction or acquittal, rendered by military courts against civilians before the promulgation of the Olaguer decision. Such final sentences should not be disturbed by the State. Only in particular cases where the convicted person or the State shows that there was serious denial of the Constitutional rights of the accused should the nullity of the sentence be declared and a retrial be ordered based on the violation of the constitutional rights of the accused, and not on the Olaguer doctrine. If a retrial is no longer possible, the accused should be released since the judgment against him is null on ac-

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[144] 150 SCRA 144.

[145] 160 SCRA 702.

[146] 190 SCRA 686.

count of the violation of his constitutional rights and denial of due process.

C. Valid Plea

A defendant is never placed under jeopardy until after he shall have pleaded to the charge against him during the arraignment. Thus, where a defective complaint was dismissed before the accused had pleaded and an amended complaint was later filed, his plea of double jeopardy was rejected because he had not been exposed to danger under the first indictment.[147] But in *People v. Balisacan,*[148] the accused, after pleading guilty, testified to prove mitigating circumstances. The Supreme Court held that "said testimony had the effect of vacating his plea of guilty. There having been no standing plea at the time the court rendered its judgment of acquittal, there can be no double jeopardy with respect to the appeal herein (by the Government)."

D. Termination of Case

There is not much problem when the case is terminated by acquittal or conviction as the effects of these decisions are settled in this jurisdiction. The acquittal is, of course, executory upon rendition and entitles the accused to immediate release. The judgment of conviction is appealable within fifteen days but becomes final if the convict starts serving his sentence even before the expiration of this period. Therefore, as held in *Bustamante v. Maceren,*[149] it can no longer be set aside by the court to order a new trial or impose a new sentence.

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[147] U.S. v. Solis, 6 Phil. 676.

[148] 17 SCRA 1119.

[149] 48 SCRA 155.

The difficulty arises where the prosecution is terminated by dismissal, because its consequences may vary according to the nature of the dismissal and whether or not it was expressly consented to by the defendant.

As a general rule, a dismissal with the express consent of the accused will not bar another prosecution for the same offense, as the said consent is considered a waiver of his right against double jeopardy. The consent, to be effective, must be express, and this excludes mere silence or failure of the accused to object to the dismissal.[150]

In *People v. Pilpa*,[151] the prosecutor moved at the hearing in the *morning* of November 20, 1976, for the dismissal of a case for frustrated murder on the ground of supposed lack of jurisdiction because intent to kill was not alleged in the information. The defense counsel manifested that he had no objection, and the court thereupon granted the motion. In the *afternoon* of the same day, however, the accused filed a manifestation signed by him and his two lawyers making of record his opposition to the dismissal of the case, and the following day filed a motion for reconsideration of the order of dismissal, arguing that the court had jurisdiction over the case. This motion was denied and not appealed. The prosecutor later filed a new information for the same offense, and the accused moved to quash on the ground of double jeopardy. The court (now presided by a different judge) granted the motion, holding that the dismissal was erroneous and not made with the express consent of the defendant. The Supreme Court on appeal of the case by the prosecution declared in part:

> It is conceded that the first information is valid. The absence of an averment as to intent to kill was not a fatal defect because the intent to kill may be inferred from the allegation that the stab

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[150] People v. Ylagan, *supra*.
[151] 76 SCRA 81.

> wound would have caused the death of the victim. (People vs. Padios, 97 Phil. 19,21-22)
>
> As already stated, after the accused Pilpa had entered his plea, the case was terminated. The question is whether the termination of the case was without his express consent and is a bar to his prosecution for frustrated murder under the second information.
>
> We hold that the oral manifestation at the hearing made by the counsel of the accused that he had no objection to the dismissal of the case was equivalent to a declaration of conformity to its dismissal or to an express consent to its termination within the meaning of Section 9 of Rule 117. He could not thereafter revoke that conformity since the court had already acted upon it by dismissing the case. He was bound by his counsel's assent to the dismissal. (People v. Romero, 89 Phil. 672; People vs. Obsania, L-24447, June 29, 1968, 23 SCRA 1249, 1269-70)

The above ruling is a reiteration of the doctrine that a dismissal of a case with the express consent of the accused will not bar another prosecution for the same offense or an appeal by the prosecution from such dismissal. It has been held that where the accused succeeds in having the case dismissed on the ground that the information is insufficient, he cannot upon the filing of a corrected information invoke double jeopardy by claiming that the original information was sufficient.[152] Neither can he, upon the dismissal of a case on his motion for lack of jurisdiction, question his prosecution for the same offense before another court, on the ground that the first court had jurisdiction after all. The Supreme Court will not permit him to make a mockery of justice by taking inconsistent positions.[153]

In *Toyoto v. Ramos,*[154] the petitioners, as members of a group known as the "Urban Poor" were arrested and prosecuted for participating in a march and rally. No bail was recommended for their provisional release. At the trial, the prosecution was able to present only one witness despite repeated postponements. The court dismissed the case on November 9, 1984, but on December 5, 1984, when the petitioners sued for *habeas corpus* (after being in custody for more than a year) they had not yet been released, on the ground that a Preventive Detention Action had been issued against them. Later, in their return, respondent asked that the case be dismissed as moot and academic because of the "temporary release" of the petitioners on December 8, 1984, but the latter said they would agree to the dismissal only if their release was to be considered permanent. In sustaining the petitioners, Justice Abad Santos said for a unanimous court (except for Justice Relova who was abroad and Justice Aquino who took "No part"):

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[152] People v. Reyes, 98 Phil. 646.

[153] People v. Acierto, 92 Phil. 534.

[154] Toyoto v. Ramos, 139 SCRA 316.

> Ordinarily, a petition for *habeas corpus* becomes moot and academic when the restraint on the liberty of the petitioners is lifted either temporarily or permanently. We have so held in a number of cases. But the instant case presents a different situation. The question to be resolved is whether the State can reserve the power to re-arrest a person for an offense after a court of competent jurisdiction has absolved him of the offense. An affirmative answer is the one suggested by the respondents because the release of the petitioners being merely temporary' it follows that they can be re-arrested at any time despite their acquittal by a court of competent jurisdiction. We hold that such a reservation is repugnant to the government of laws and not of men principle. Under this principle the moment a person is acquitted on a criminal charge he can no longer be detained or re-arrested for the same offense. This concept is so basic and elementary that it needs no elaboration.

1) Appeal of Prosecution

The prosecution can appeal where the accused is deemed to have waived or is estopped from invoking his right against double jeopardy.

But the defense of double jeopardy will be available to the accused where the dismissal of the prosecution against him, even with his express consent, was based on insufficiency of the evidence of the prosecution[155] or denial of his right to a speedy trial,[156] because these dismissals are considered in the nature of an acquittal. As such, they cannot be appealed by the prosecution and will bar another prosecution of the defendant for the same offense; and this is true even if the dismissal be erroneous.[157]

In *People v. City Court of Silay*,[158] the trial court dismissed a charge for falsification when, after the prosecution had presented its evidence and rested its case, the accused moved to dismiss on the ground that their guilt had not been proved beyond reasonable doubt. The prosecution went on *certiorari* to the Supreme Court, where the accused invoked double jeopardy. It was held that the order of dismissal was based on the merits and, although erroneous, amounted to an acquittal which therefore could not be appealed by the government. "However erroneous the order of the respondent Court is, and although a miscarriage of justice resulted from said order," Justice Palma said," such error cannot now be righted because of the timely plea of double jeopardy."

In *Esmeña v. Pogoy*,[159] the prosecutor was not ready because his witness was absent. The accused insisted on their right to a speedy trial. The judge on his own volition provisionally dismissed the case without the defendants' express consent. The Supreme Court held that the case could not be reviewed because double jeopardy had attached.

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[155] People v. City Court of Silay, *infra.*

[156] People v. Añano, 97 Phil. 28; People v. Tacneng, 105 Phil. 1298; People v. Robles, 105 Phil. 1016; Salcedo v. Mendoza, 88 SCRA 811.

[157] People v. City Court of Silay, *infra.*

[158] 74 SCRA 248.

[159] 100 SCRA 861.

The grant of a motion to quash, which is filed before the defendant makes his plea, can be appealed as he has not yet been placed in jeopardy.[160] Likewise, where the accused is acquitted without giving the prosecution its day in court, this denial of due process may be validly appealed.[161] So too may an order of dismissal or an acquittal made with grave abuse of discretion amounting to lack of jurisdiction,[162] or where a person being tried for theft was acquitted of the separate charge of grave coercion,[163] or where the case was dismissed on the ground of delay, which was found by the Supreme Court to have been caused by the defense itself.[164] But the government cannot appeal from an acquittal or for the purpose of increasing or modifying a penalty even if the decision be not in accordance with law.[165]

2) Crimes Covered

If the four above-stated elements of double jeopardy are present, the accused may not be prosecuted anew for the original offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the original complaint or information.

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[160] Rule 117, Sec. 9, Rules of Court.

[161] People v. Navarro, 63 SCRA 264.

[162] People v. Pablo, 98 SCRA 289.

[163] People v. Consulta, 70 SCRA 277.

[164] People v. Dichoso, *supra;* People v. Jardin, 124 SCRA 167.

[165] People v. Ruiz, 81 SCRA 453; People v. Pomeroy, 52 O.G. 1458.

A person acquitted of murder cannot be prosecuted again for the same murder, or for homicide, as this is embraced in the first offense. If the original prosecution for homicide fails, he cannot again be indicted, this time for the crime of murder, as this embraces the original charge. He may not be prosecuted first for attempted robbery and then for frustrated robbery, or vice versa, or first for slight physical injuries and then for less serious physical injuries, and then again for serious physical injuries arising from the same act. As our Supreme Court has said:

> "The effect of prosecuting first the lesser offense where a larger offense has been committed and could be prosecuted would be to split the larger offense into its lesser parts, thus bringing the man into jeopardy for each of such parts. This is unthinkable under a civilized system of criminal justice. The State in electing to prosecute the first one waives, in legal effect, all the others."[166]

a) Doctrine of Supervening Event

Under the doctrine of supervening event, however, the accused may be prosecuted for another offense if a subsequent development changes the character of the first indictment under which he may have already been charged or convicted.[167] Thus, a person convicted of physical injuries may still be prosecuted for homicide if the victim dies later.[168] In *People v. Adil,*[169] the accused was first prosecuted for slight physical injuries, but after he had pleaded not guilty the charge was changed to serious physical injuries when it appeared that the wounds inflicted on the victim, after healing, had left permanent scars on his face. The Supreme Court held there was no double jeopardy as the deformity did not exist and could not have been apprehended at the time the first information was filed.[170]

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[166] People v. Besa, 74 Phil. 57; 15 Am. Jur., pp. 60-61.
[167] Melo v. People, 85 Phil. 766.
[168] Diaz v. United States, 223 U.S. 442.
[169] 76 SCRA 462.

The case of *People v. City Court of Manila,*[171] raised some eyebrows because of the "suspicious circumstances" that attended the filing of the original charge. The accident in question occurred on October 17, 1972. The information for serious physical injuries was filed with the city court on October 18, on the same day that the victim died. On October 20, the accused was arraigned, pleaded guilty, was ordered imprisoned for one month and one day of *arresto mayor,* and commenced serving sentence. On October 24, however, he was again charged, this time with homicide thru reckless negligence based on the same accident, but on November 17, the city court dismissed the information on the ground of double jeopardy.

In the petition for review filed by the prosecution, the dismissal was affirmed by the Supreme Court, which held that no new fact had supervened since the arraignment and conviction of the accused under the first information. The victim's death did not occur *after* the first prosecution.

Similar irregularities may now be avoided under Rule 117, Section 7, of the Rules of Court, which additionally provides that the conviction of the accused shall not be a bar to another prosecution for an offense which necessarily includes the offense charged in the former complaint or information under any of the following instances:

(1) The graver offense developed due to supervening facts arising from the same act or omission constituting the former charge;

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[170] Compare with People v. Silva, 4 SCRA 95.

[171] 121 SCRA 637.

(2) The facts constituting the graver charge became known or were discovered only after the filing of the former complaint or information; or

(3) The plea of guilty to the lesser offense was made without the consent of the prosecutor and of the offended party except as provided in Section 1(f) of Rule 116.

b) Inseparable Offenses

Where one offense is inseparable from another and proceeds from the same act, they cannot be the subject of separate prosecutions. Thus, a person indicted for smoking opium cannot be charged also with possessing opium;[172] and one who steals several things from the same person on the same occasion can be charged with only one crime of theft.[173] One already convicted of less serious physical injuries cannot be later be prosecuted for assault on a person in authority committed on the same occasion and against the same victim.[174]

However, it is possible for one act to give rise to several crimes, in which case separate prosecutions for each crime may be filed, provided the elements of the several crimes are not identical. To illustrate, a person who while driving without a license is involved in an accident may be prosecuted both for damage to property and violation of the Motor Vehicles Law.[175] A pardonee who commits the crime of falsification and thus violates the condition of his pardon can be prosecuted for both offenses without denial of the right against double jeopardy.[176] Carrying an unlicensed firearm during the election period constitutes two offenses arising from the same act that can be separately prosecuted.[177] Conviction of illegal recruitment under the Labor Code does not bar prosecution of the offender for estafa.[178]

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[172] U.S. v. Poh Chi, 20 Phil. 140.

[173] People v. Tumlos, 67 Phil. 320.

[174] Tacas v. Cariaso, 72 SCRA 528.

[175] People v. Guanco, 47 O.G. 4179.

[176] Culanag v. Director of Prisons, 20 SCRA 1123.

And in *People v. Tac-an,*[178a] it was held:

> It is elementary that the constitutional right against double jeopardy protects one against a second or later prosecution for the same offense, and that when the subsequent information charges another and different offense, although arising from the same act or set of acts, there is no prohibited double jeopardy. In the case at bar, it appears to us quite clear that the offense charged in Criminal Case No. 4007 is that of unlawful possession of an unlicensed firearm penalized under a special statute, while the offense charged in Criminal Case No. 4012 was that of murder punished under the Revised Penal Code. It would appear self-evident that these two (2) offenses in themselves are quite different one from the other, such that in principle, the subsequent filing of Criminal Case No. 4012 is not to be regarded as having placed appellant in a prohibited second jeopardy.

In the case of *Perez v. Court of Appeals,*[179] a person previously acquitted of consented abduction was subsequently charged with qualified seduction arising from the same act on which the earlier prosecution was based. In holding that there was no double jeopardy, the Supreme Court declared:

> A plea of double jeopardy cannot be accorded merit where two indictments are perfectly distinct in point of law, however closely they may appear to be connected in fact. Protection against double jeopardy may be invoked only for the same offense or identical offense. Where two different laws (or articles of the same code) define two crimes, prior jeopardy as to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same technical offense. Where two different laws (or articles of the same code) define two crimes, prior jeopardy as

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[177] Tapales v. Court of Appeals, 120 SCRA 471.

[178] People v. Saley, 291 SCRA 715.

[178a] 182 SCRA 601; see also People v. Tiozon, 198 SCRA 368.

[179] 168 SCRA 236.

> to one of them is no obstacle to a prosecution of the other, although both offenses arise from the same facts, if each crime involves some important act which is not an essential element of the other.
>
> There are similar elements between consented abduction and qualified seduction, namely: (1) that the offended party is a virgin, and, (2) that she must be over twelve (12) and under eighteen (18) years of age. However two elements differentiate the two crimes. Consented abduction, in addition to the two common elements, requires that: (1) the taking away of the offended party must be with her consent, after solicitation or cajolery from the offender; and, (2) the taking away of the offended party must be with lewd designs. On the other hand, an information for qualified seduction also requires that: (1) the crime be committed by abuse of authority, confidence or relationship, and, (2) the offender has sexual intercourse with the woman.

Act Violating Law and Ordinance

The Constitution says that "if an act is punished by a law and an ordinance, conviction or acquittal under either *shall constitute a bar to another prosecution for the same act.*" To illustrate, a person convicted of *jueteng* under a municipal ordinance may not again be charged with the same act under the provisions of Article 195 of the Revised Penal Code punishing the same act.

Analyzing the double jeopardy provision in the Bill of Rights, Chief Justice Concepcion said in the case of *Yap v. Lutero:*[180]

> Our Bill of Rights deals with two (2) kinds of double jeopardy. The first sentence of clause 20, Section 1, Article III of the Constitution, ordains that no person shall be twice put in jeopardy of punishment for the same offense. The second sentence of said clause provides that if an act is punished by a law and an ordinance, conviction, or acquittal under either shall constitute a bar to another prosecution for the same act. Thus, the first sentence prohibits double jeopardy of punishment for the same offense, whereas the second contemplates double jeopardy of pun-

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[180] L-1266, April 30, 1959.

> ishment for the same act. Under the first sentence, one may be twice put in jeopardy of punishment of the same act, provided that he is charged with different offenses, or the offense charged in one case is not included in, or does not include, the crime charged in the other case. The second sentence applies, even if the offenses charged are not the same, owing to the fact that one constitutes a violation of an ordinance and the other' a violation of a statute. If the two charges are based on one and the same act, conviction or acquittal under either the law or the ordinance shall bar a prosecution under the other. Incidentally, such conviction or acquittal is not indispensable to sustain the plea of double jeopardy of punishment for the same offense. So long as jeopardy has attached under one of the informations charging said offense, the defense may be availed of in the other case involving the same offense, even if there has been neither conviction nor acquittal in either case.

In *People v. Relova*,[181] a person was charged under a city ordinance with having installed a device in his ice plant that lowered his electric meter readings to the prejudice of the city government. The information was, however, dismissed on the ground of prescription, having been filed more than two months after discovery of the offense. Later, the same defendant was charged anew, this time before the court of first instance, for theft of electric current under the Revised Penal Code. On motion of the accused, the respondent judge dismissed the case because of double jeopardy, and the prosecution appealed. Through Justice Feliciano, the Supreme Court sustained the dismissal, applying the above-mentioned *Yap Case* and stating in part as follows:

> The basic difficulty with the petitioner's position is that it must be examined, not under the terms of the first sentence of Article IV (2) of the 1973 Constitution, but rather *under the second sentence of the same section.* The first sentence of Article IV (22) sets forth the general rule: the constitutional pro-

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[181] 148 SCRA 292.

tection against double jeopardy is *not* available where the second prosecution is for an offense that is different from the offense charged in the first or prior prosecution, although both the first and second offenses may be based upon the same act or set of acts. The second sentence of Article IV (22) embodies an exception to the general proposition: the constitutional protection against double jeopardy is available although the prior offense charged under an ordinance be different from the offense charges subsequently under a national statute such as the Revised Penal Code, *provided,* that both offenses spring from the same act or set of acts. This was made clear sometime ago in *Yap v. Lutero.*

Put a little differently, where the offenses charged are penalized either by different sections of the same statute or by different statutes, the important inquiry relates to the *identity of offenses charged*: the constitutional protection against double jeopardy is available only where an identity is shown to exist between the earlier and the subsequent offenses charged. In contrast, where one offense is charged under a municipal ordinance while the other is penalized by a statute, the critical inquiry is to the *identity of the acts* which the accused is said to have committed and which are alleged to have given rise to the two offenses: the constitutional protection against double jeopardy is available so long as the acts which constitute or have given rise to the first offense under a municipal ordinance are the same acts which constitute or have given rise to the offense charged under a statute.

The question may be raised why one rule should exist where two offenses under two different sections of the same statute or under different statutes are charged, and another rule for the situation where one offense is charged under a municipal ordinance and another offense under a national statute. If the second sentence of the double jeopardy provision had not been written into the Constitution, conviction or acquittal under a municipal ordinance would never constitute a bar to another prosecution for the same act under a national statute. An offense penalized by municipal ordinance is, by definition, different from an offense under a statute. The two offenses would never constitute the same offense having been promulgated by different rule-making authorities—though one be subordinate to the other—and the plea of double jeopardy would never lie. The discussions during the 1934-1935 Constitutional Convention show that the second sentence was inserted precisely for the purpose of extending the constitutional protection against double jeopardy to a situation which would not otherwise be covered by the first sentence.

Suggested Reading:

Martelino v. Alejandrino, 32 SCRA 106
Chavez v. Court of Appeals, 24 SCRA 663
De la Camara v. Enage, 41 SCRA 3
Borja v. Mendoza, 77 SCRA 422
Draculan v. Donato, 85 SCRA 266
Aquino v. Military Commission No. 2, 63 SCRA 546
Louisiana v. Resweber, 329 U.S. 459
People v. Obsania, 23 SCRA 766
Melo v. People, 85 Phil. 766
People v. Adil, 76 SCRA 462
People v. City Court of Manila, 121 SCRA 637
Salonga v. Paño, 134 SCRA 438
Carredo v. People, 183 SCRA 273

Chapter 21

FREE ACCESS TO COURTS

THE NEW Constitution reiterates and widens in Article III, Section 11, the rule in the old Bill of Rights *that "free access to the courts and quasi-judicial bodies and adequate legal assistance shall not be denied to any person by reason of poverty."* This is only fitting as the courts of justice should be as available to the pauper as to the affluent in the protection of their respective rights. Assuring him that the courts will protect him but only if he is able to afford the prohibitive cost of litigation is like spreading a Barmecide feast before the hapless indigent. It is at best a cruel deception, at worst a cynical oppression of the impoverished suitor.

Sources of implementation

Inspired by the social justice policy and covered by the equal protection clause, this rule has been implemented by several provisions of the Rules of Court in favor of the pauper litigant and by such laws as the Laurel Law, which permits the provisional release of the accused without the necessity of posting bail under certain conditions. The Integrated Bar of the Philippines provides deserving indigents with free legal aid, including representation in court, and similar services are available from the Department of Justice to litigants who cannot afford retained counsel, like the accused in a criminal case who can ask for the assistance of counsel de oficio. There are also private legal assistance organizations now functioning for the benefit of penurious clients who otherwise might be unable to resort to the courts of justice because only of their misfortune of being poor. This provision makes them the equal of the rich before the law.

Chapter 22

CITIZENS OF THE PHILIPPINES

CITIZENSHIP is membership in a political community with all its concomitant rights and responsibilities. Whether natural-born or naturalized, this status confers upon the individual certain prerogatives which may be denied the alien, although both of them come under the term "person" as protected by the due process and equal protection clauses. Thus, the citizen enjoys certain exclusive rights, such as the rights to vote, to run for public office, to exploit natural resources, to operate public utilities, to administer educational institutions, and to manage the mass media. In fact, distinction is made by the Constitution even between the natural-born citizen and the naturalized citizen although they are ordinarily considered equal. By specific fiat, all constitutional offices are now open only to natural-born citizens and barred to the naturalized Filipino.

The most common method of acquisition of citizenship is by birth, either under the *jus sanguinis* or the *jus soli.* Citizenship is conferred under the first principle by virtue of blood relationship and under the second by virtue of the place of birth. To illustrate, a child born to a Filipino father is a citizen of the Philippines under the *jus sanguinis* regardless of his place of birth. But if that child was born in the United States, he could also claim American citizenship on the basis of the *jus soli,* which is observed in that country.

As under the old Constitution, the *jus sanguinis* is still the basis for the acquisition of Philippine citizenship. An attempt was made in the Constitutional Convention of 1971 to adopt the *jus soli* as an additional criterion but the proposal was voted down.

Citizens of the Philippines

Under the present Constitution, the following are considered citizens of the Philippines:

> (1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.
>
> (2) Those whose fathers or mothers are citizens of the Philippines.
>
> (3) Those born before January 17, 1973 of Filipino mothers, who elect Philippine citizenship upon attaining the age of majority.
>
> (4) Those who are naturalized in accordance with law.[1]

(1) Citizenship Under the 1935 Constitution

Reference in the first paragraph of the above enumeration is specifically to those who were citizens of the Philippines under the 1935 Constitution, to wit:

> (1) Those who were citizens of the Philippine Islands at the time of the adoption of the Commonwealth Constitution on November 15, 1935;
>
> (2) Those born in the Philippine Islands of foreign parents who, prior to the adoption of the Commonwealth Constitution, had been elected to public office in the Philippine Islands;
>
> (3) Those whose fathers were citizens of the Philippines;
>
> (4) Those whose mothers were citizens of the Philippines and, upon attaining majority age, elected Philippine citizenship; and

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[1] Art. IV, Sec. 1, 1987 Constitution.

(5) Those who were naturalized in accordance with law.[2]

Also included are those who were considered or became citizens of the Philippines under the 1973 Constitution so long as they retained their Philippine citizenship on February 2, 1987, when the new Constitution was adopted.

(2) Children of Filipino Parents

It will be noted from the above enumeration that only children born to Filipino fathers were granted natural-born citizenship under the Commonwealth Constitution. If the child was born to an alien father and a Filipino mother, he followed the citizenship of the father and acquired at best only an inchoate Philippine citizenship which he could perfect by election upon attaining majority mage. The only exception was where the child was born out of lawful wedlock, in which case he acquired the citizenship of the only legally known parent, *i.e.*, the mother, and so became a Filipino citizen at birth.[3]

Under the new rule, the child is considered a natural-born Filipino citizen provided either of his parents is a Filipino citizen. The Filipino citizenship of the mother will now also confer natural-born Philippine citizenship upon the child, without the necessity of election as before upon his attaining majority age.

This innovation has prospective application only, beginning on the date of the effectivity of the 1973 Constitution, where it was first adopted. Hence, a child born in, say, 1970, to an alien father and Filipino mother is still considered a foreigner, following his father's citizenship. But if his birth occurred to the same parents on or after

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[2] Art. IV, Sec. 1, 1935 Constitution.

[3] Serra v. Republic, L-4223 May 12, 1952.

January 17, 1973, when the 1973 Constitution was ratified, he will be considered a citizen of the Philippines by virtue of his mother's citizenship.

(3) Election of Philippine Citizenship

The right of election permitted under the present Constitution was available only to those born to Filipino mothers under the 1935 Constitution who, had that charter not been changed, would have been able to elect Philippine citizenship upon attaining majority age. That right was retained for them under Article III, Section 1 (3). Thus, in the example given above of a child born to an alien father and a Filipino mother in 1970, the right of election could still be exercised by him after he reached majority age in 1988 although the 1935 Constitution was no longer in force. That right was still exercisable by him under the aforecited provision in the new Constitution.

Obviously, election is not necessary in the case of the child born to a Filipino mother under the present Constitution as he would himself be considered a Filipino citizen at birth. It should be noted, however, that if for some reason or another the Filipino mother lost her citizenship upon marriage to a foreigner, the right of election—which would have been available if the birth had occurred under the old Constitution—cannot be claimed by the offspring born under the new Constitution. The right of election was available only if the Filipino mother's child was born before the 1973 Constitution took effect.

The above-mentioned provision had therefore only transitory operation ending after children born to Filipino mothers up to noon of January 17, 1973, shall have availed themselves of the right of election. In this connection, the rule was that this right could be exercised ordinarily only within three years from attainment of the majority age of 18,[4] or only up to January 17, 1994.

(4) Naturalization

Naturalization is a process by which a foreigner acquires, voluntarily or by operation of law, the citizenship of another state.

Naturalization may be direct or derivative.

Direct naturalization is effected: (1) by individual proceedings, usually judicial, under general naturalization laws; (2) by special act of the legislature, often in favor of distinguished foreigners who have rendered some notable service to the local state; (3) by collective change of nationality (naturalization *en masse)* as a result of cession or subjugation; and (4) in some cases, by adoption of orphan minors as nationals of the State where they are born.

Derivative naturalization in turn is conferred: (1) on the wife of the naturalized husband; (2) on the minor children of the naturalized parent; and (3) on the alien woman upon marriage to a national.[5]

Derivative naturalization does not always follow as a matter of course, for it is usually made subject to stringent restrictions and conditions. Our own laws, for instance, provide that an alien woman married to a Filipino shall acquire his citizenship only if she herself might be lawfully naturalized.[6]

A. Procedure

The steps involved in the procedure of naturalization may be summarized as follows:

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[4] Opinion, Sec. of Justice, No. 120, S-1948.

[5] Cruz, International Law, 2nd, ed., p. 154.

[6] Sec. 15, C.A. No. 473.

At least one year before he files his petition for naturalization, the applicant shall file with the Office of the Solicitor General a declaration of his intention to be a citizen of the Philippines. The main purposes of the declaration of intention are to enable the government to make initial investigations into his circumstances to determine, at least tentatively, his fitness for Philippine citizenship and to test his sincerity.[7]

The next step is the filing of the petition for naturalization with the regional trial court of the province or city where the petitioner has resided for at least one year. The petition must state among other data the name or names of the petitioner, his various places of residence in the Philippines, the date of his arrival, his occupation, his date and place of birth, the names and personal circumstances of his wife and children, if any, besides the allegations that he possesses the qualifications and none of the disqualifications for naturalization.[8]

Upon receipt of the petition, the clerk of court shall have the duty of publishing the same in the Official Gazette and in one newspaper of general circulation in the province or city once a week for three consecutive weeks and to post notices thereof and of the hearing. This requirement is jurisdictional and non-observance thereof will render all the proceedings null and void.[9]

At least six months after the last publication, but in no case within thirty days before any election, the hearing shall begin, at which the petitioner shall establish all the allegations of his petition, to be corroborated by at least two credible witnesses. The Republic of the Philippines shall be represented by the Solicitor General or his authorized representative, who may be the provincial or city prosecutor.[10]

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[7] Sec. 5, C.A. No. 473.

[8] Sec. 7, *Ibid.*

[9] Sec. 9, *id.*

Our naturalization laws require age, residence, moral, occupational, language and educational qualifications. Among the prescribed disqualifications are opposition to organized government, belief in polygamy, failure to mingle socially with the Filipinos, affliction with an incurable contagious disease, etc.

Specifically, the petitioner is required to possess the following qualifications:

(1) He must be not less than eighteen years of age on the date of the hearing of the petition;

(2) He must have resided in the Philippines for a continuous period of not less than ten years;

(3) He must be of good moral character and believe in the principles underlying the Philippine Constitution, and must have conducted himself in a proper and irreproachable manner during the entire period of his residence in the Philippines in relation with the constituted government as well as the community in which he is living;

(4) He must own real estate in the Philippines worth not less than five thousand pesos, Philippine currency, or must have some known lucrative trade, profession or lawful occupation;

(5) He must be able to speak and write English or Spanish and any of the principal Philippine languages;

(6) He must have enrolled his minor children of school age in any of the public schools or private schools recognized by the Office of Private Education in the Philippines, where Philippine history, government and civics are taught or prescribed as part of the school curriculum

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[10] Sec. 10, *id.*

during the entire period of the residence in the Philippines required of him prior to the hearing of his petition for naturalization as required for naturalization as a Philippine citizen.

The qualifications of an applicant must be possessed by him at the time he applies for naturalization and not subsequently.[11]

The ten-year residence requirement is reduced to five years when the applicant possesses any of the following special qualifications:

(1) Having honorably held office under the Government of the Philippines or under that of any of the provinces, cities, municipalities, or political subdivisions thereof;

(2) Having established a new industry or introduced a useful invention in the Philippines;

(3) Being married to a Filipino woman;

(4) Having been engaged as a teacher in the Philippines in a public or recognized private school not established for the exclusive instruction of children of persons of a particular nationality or race, in any of the branches of education or industry for a period of not less than two years;

(5) Having been born in the Philippines.[12]

The following are disqualified from naturalization:

(1) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;

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[11] Sec. 2, *id.*

[12] *Ibid.*

(2) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;

(3) Polygamists or believers in the practice of polygamy;

(4) Persons convicted of crimes involving moral turpitude;

(5) Persons suffering from mental alienation or incurabled contagious diseases;

(6) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace the customs, traditions, and ideals of the Filipinos;

(7) Citizens or subjects of nations with whom the Philippines is at war, during the period of such war;

(8) Citizens or subjects of a foreign country whose laws do not grant Filipinos the right to become naturalized citizens or subject thereof.[13]

If the petitioner is able to prove that he has all the qualifications and none of the disqualifications for naturalization, his petition shall be granted and the decision shall become final after thirty days from notice.[14] However, it shall become executory only after the period of two years during which the petitioner shall continue to be under probation, as it were, so the government can be doubly sure he is entitled to be naturalized as a citizen of the Philippines.[15]

Following the two-year probation period, the applicant may apply for administration of the oath of citizenship in accordance with the decision approving his petition for naturalization. The court shall grant this motion provided it is established that the petitioner has not left the Philippines, has devoted himself to a lawful calling, has not been convicted of any violation of law and has not committed any act in contravention of any government-announced policy.[16]

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[13] Sec. 4, *id.*
[14] Sec. 12, *id.*
[15] R.A. No. 530.

The last step in the naturalization process is the administration of the oath of citizenship, by virtue of which the petitioner shall embrace Philippine citizenship and renounce allegiance to any foreign State.[17]

B. Effects

Naturalization shall confer upon the petitioner all the rights of a Philippine citizen except only those reserved by the Constitution to natural-born citizens of the Philippines. It shall also vest Philippine citizenship upon his wife if she might herself be lawfully naturalized.[18]

His minor children born in the Philippines shall also be considered citizens of the Philippines.[19]

The minor child born outside the Philippines who was residing in this country at the time of the naturalization of the petitioner shall also be considered a Filipino. If born outside the Philippines before his parent's naturalization, the minor child shall be considered a citizen of the Philippines only during his minority unless he begins to reside permanently in the Philippines while still a minor.[20]

If the child was born outside the Philippines after his parent's naturalization, he shall be considered a citizen of the Philippines provided he registers as such before any Philippine consulate within one year after attaining majority age and takes the oath of allegiance.[21]

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[16] *Ibid.*

[17] *Id.*

[18] Sec. 15, C.A. No. 473.

[19] *Ibid.*

[20] *Id.*

C. Revocation

Naturalization is not an incontestable or irrevocable status. Under existing law, a person may be denaturalized on petition of the Solicitor General on the ground that his certificate of naturalization was obtained fraudulently; that he established his permanent residence abroad within five years after his naturalization; that the petition was based on an invalid declaration of intention; that his minor children failed to comply with the educational requirements through his fault or neglect; or that he allowed himself to be used as a dummy in violation of our naturalization laws.[22]

Revocation on grounds affecting the intrinsic validity of the proceedings shall divest the wife and children of their derivative naturalization. But if the ground was personal to the denaturalized Filipino, as where he permanently resides in a foreign country after his naturalization, his wife and children shall retain their Philippine citizenship.

Mixed Marriages

It was provided under the old rule that a Filipino woman who married an alien forfeited her Philippine citizenship if under the laws of her husband's State she was required to follow his citizenship. Thus, if a Filipino woman married a Chinese, she automatically became a Chinese herself, following her husband's citizenship.

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[21] *Id.*

[22] Sec. 18, C.A. No. 473.

This rule has been reversed by Article IV, Section 4, providing as follows:

> Citizens of the Philippines who marry aliens shall retain their Philippine citizenship, unless by their act or omission they are deemed, under the law, to have renounced it.

The above provision was probably inspired by a desire to equalize the situation of the Filipino female with that of the male citizen, who even under the old rule did not forfeit his Philippine citizenship if he married a foreigner. Now both male and female citizens shall remain Filipinos despite their alien spouses except only when they may be deemed by their act or omission to have renounced their Philippine citizenship.

But what of the reverse of the situation? Suppose it is the alien woman who marries a Filipino?

Section 15 of C.A. No. 473 provides that "any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized, shall be deemed a citizen of the Philippines."

In its latest pronouncement on this question, which has been the subject of a rather inconsistent and indecisive interpretation by our Supreme Court, the clause "who might herself be lawfully naturalized" was interpreted to mean only that the alien woman must not be laboring under any of the disqualifications prescribed by law for naturalization in her own right as a Filipino citizen. Moreover, she can establish her claim to Philippine citizenship in administrative proceedings before the immigration authorities only and will not have to file a judicial action for this purpose. Unlike before, she is also no longer required to prove as well that she possesses all the qualifications for naturalization.

Recapitulating, Justice Barredo declared in the case of *Moy Ya Lim Yao v. Commissioner of Immigration*:[23]

> Accordingly, We now hold, all previous decisions of this Court indicating otherwise notwithstanding, that under Section 15 of Commonwealth Act 473, an alien woman marrying a Filipino, native-born or naturalized, becomes *ipso facto* a Filipina provided she is not disqualified to be a citizen of the Philippines under Section 4 of the same law. Likewise, an alien woman married to an alien who is subsequently naturalized here follows the Philippine citizenship of her husband the moment he takes his oath as Filipino citizen, provided that she does not suffer from any of the disqualifications under said Section 4.

Loss and Reacquisition of Citizenship

According to C.A. No. 63, Philippine citizenship is lost:

(1) By naturalization in a foreign country;

(2) By express renunciation of citizenship;

(3) By subscribing to an oath of allegiance to support the Constitution or laws of a foreign country upon attaining eighteen years of age or more: *Provided, however*, That a Filipino may not divest himself of Philippine citizenship in any manner while the Republic of the Philippines is at war with any country;

(4) By rendering service to or accepting commission in the armed forces of a foreign country: *Provided*, That the rendering of service to, or the acceptance of such commission in, the armed forces of a foreign country, and the taking of an oath of allegiance incident thereto, with consent of the Republic of the Philippines, shall not divest a Filipino of his Philippine citizenship if either of the following circumstances is present:

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[23] 41 SCRA 292.

(a) The Republic of the Philippines has a defensive and/or offensive pact of alliance with the said foreign country; or

(b) The said foreign country maintains armed forces in the Philippine territory with the consent of the Republic of the Philippines: *Provided*, That the Filipino citizen concerned, at the time of rendering said service, or acceptance of said commission, and taking the oath of allegiance incident thereto, states that he does so only in connection with its service to said foreign country: And *provided, finally*, That any Filipino citizen who is rendering service to, or is commissioned in, the armed forces of a country under any of the circumstances mentioned in paragraph (a) or (b), shall not be permitted to participate nor vote in any election of the Republic of the Philippines during the period of his service to, or commission in, the armed forces of said foreign country. Upon his discharge from the service of the said foreign country, he shall be automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen;

(5) By cancellation of the certificate of naturalization;

(6) By having been declared by competent authority, a deserter of the Philippine armed forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted; and

(7) In case of a woman, upon her marriage, to a foreigner if, by virtue of the laws in force in her husband's country, she acquires his nationality.

The provisions of this section notwithstanding, the acquisition of citizenship by a natural-born Filipino citizen from any one of the Iberian and any friendly democratic Ibero-American countries shall not produce loss or forfeiture of his Philippine citizenship if the law of that country grants the same privilege to its citizens and such had been agreed upon by treaty between the Philippines and the foreign country from which citizenship is acquired.

The last method is, however, now qualified by Section 4 of Article IV, discussed earlier.

Philippine citizenship may be acquired by: (1) naturalization, provided that the applicant possesses none of the disqualifications prescribed for naturalization; (2) repatriation of deserters of the Army, Navy or Air Corps, provided that a woman who lost her citizenship by reason of her marriage to an alien may be repatriated in accordance with the provisions of this Act after the termination of the marital status; and (3) direct act of the Congress.[24]

In *Bengson v. House of Representatives Electoral Tribunal*,[24a] Teodorico C. Cruz, a natural-born Filipino citizen, enlisted in the U.S. armed forces in 1985, thereby losing his Philippine citizenship, and was subsequently naturalized as an American citizen in 1990. In 1994, he was repatriated under Rep. Act 2630 and was elected in 1998 to the House of Representative. His citizenship was then questioned on the ground that it was acquired through repatriation by his taking an oath of allegiance to the Philippines and registering it with the local civil registry. This was not natural-born citizenship, as required of members of Congress, because the Constitution defines natural-born citizens as "those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship."

The Supreme Court rejected the challenge, holding that "Cruz is deemed to have recovered his original status as a natural-born citizen, a status which he acquired at birth as the son of a Filipino father. It bears stressing that the act of repatriation allows him to recover or return to his original status before he lost his Philippine citizenship." Justice Sandoval Gutierrez filed a strong dissenting opinion.

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[24] Sec. 2, C.A. No. 63.

[24a] 357 SCRA 545.

Dual Citizenship

Dual citizenship is now recognized in this country and allows natural-born Filipinos to enjoy the rights they used to enjoy here before they acquired a new citizenship abroad. Under R.A. No. 9225, such former Filipinos may re-acquire their Philippine citizenship by simply taking the prescribed oath of allegiance to the Philippines, which oath does not require the usual rejection of allegiance to any and all other foreign states. This privilege is also available to natural-born Filipinos who are naturalized after the effectivity of the law in 2003 and are allowed to retain their Philippine citizenship. The unmarried minor children of those natural-born Filipinos who reacquire or retain their Philippine citizenship despite their naturalization in another country will also be considered citizens of this country.

Enjoyment of the status of dual citizen will depend on the willingness of the foreign country to share the allegiance of the naturalized Filipino with the Philippines. If the adopted country demands total allegiance from its nationals, including the naturalized Filipinos, then the latter must make a crucial choice between the country he has deserted and the greener pastures of his adopted land. If he intends to run for public office or accept an appointive public office in the Philippines, then his oath of allegiance to this country must contain a rejection of all other countries, in which case he cannot be, or shall cease to be, a dual citizen.

In the curious case of *Loida Nicolas Lewis v. Commission on Elections*, the Supreme Court held that dual citizens do not have to satisfy the residences requirement for suffrage as prescribed in Art. V, Sec. 1 of the Constitution, holding that "there is no provision in the dual citizenship law—R.A. 9225—requiring 'duals' to actually establish residence and physically stay in the Philippines first before they can exercise the right to vote."

True. But that requirement is found in the Constitution itself which does not exempt dual citizens as a special privileged class.

Natural-born Citizens

The provision defining the natural-born citizen has been reworded as follows:

> Sec. 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

The best example is a child born to Filipino parents who will thus follow their citizenship and be considered born a Filipino. The second sentence settles the debate on whether the child born of a Filipino mother who elects Philippine citizenship upon reaching majority age should be regarded as natural-born. The question is answered affirmatively even if it may be argued, and quite plausibly, that the act of election is a positive act "to acquire or perfect" Philippine citizenship.

Dual Allegiance

In *Mercado v. Manzano*,[25] the respondent's election as vice-mayor of Makati City was questioned under a provision of the Local Government Code and the charter of Makati City disqualifying from any elective local office "those with dual citizenship." Manzano was born in the United States of Filipino parents and was therefore a Filipino citizen under the *jus sanguinis* and also an American citizen under the *jus soli*; in short, he was a dual citizen. The Supreme Court found, however, that upon attaining majority age, he voted in the 1992, 1995 and 1998 elections, thereby effectively electing Philippine citizenship in accordance with the 1935 Constitution and ceasing to be a dual citizen. Hence, he was qualified to be elected to the disputed position.

The Supreme Court stressed that the constitutional policy embodied in Art. IV, Sec. 5 is not against dual citizenship but dual loyalty, such as that often manifested by naturalized Filipinos who, while professing allegiance to their adoptive land, retain their allegiance to their native land and even involve themselves in its political affairs. This is the clear import of the said provision declaring that:

> "Dual allegiance of citizens is inimical to the public interest and shall be dealt with by law."

The short-sighted view of the Constitutional Commission of 1986, as seconded by the Supreme Court in the *Manzano Case*, is that dual citizenship was allowable but not dual allegiance. Citizenship requires allegiance and dual citizenship requires dual allegiance. A citizen owes his total allegiance to his country but a dual citizen must share his allegiance to two or even more states, which may even be in conflict with each other. Manzano was sought to be disqualified under the Local Government Code as a dual citizen but the Supreme Court said he did not have dual allegiance, thus misinterpreting the law and its purpose.

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[25] 307 SCRA 630.

To date, however, this policy has not yet been implemented by Congress.

Republic Act No. 9225

Republic Act No. 9225, otherwise known as the Citizenship Retention and Reacquisition Act of 2003, provides for the restoration or retention of the original citizenship of any natural-born Filipino who has acquired citizenship in a foreign country through naturalization proceedings, provided he takes the following oath:

"I, (name of individual) solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders of the duly constituted authorities of the Philippines, and I hereby declare that I will recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto and that I impose this obligation upon myself voluntarily and with no mental reservation or purpose of evasion."

It is further provided that the unmarried child, whether legitimate, illegitimate or adopted, below eighteen years of age" shall also acquire derivative citizenship upon taking of such oath by the parent after the effectivity of the law.

Significantly, the prescribed oath does not contain the standard clause that the naturalized person renounces his allegiance to any other state (including his former state), but that much is assumed when he swears that he "will recognize and accept the supreme authority of the Philippines" even as against that of the other state where he has been naturalized.

The law does not apply to persons who become citizens of a foreign land *jure soli* and also the citizenship of their parents *jure sanguinis*. An example is a person born in the United States to a Filipino father or mother, who would be an American citizen by reason of the place of his birth and a citizen of the Philippines under our Constitution.

Of doubtful validity is the unanimous decision of the Supreme Court in the case of *Loida Nicolas Lewis v. Commission on Elections*,[26] where it was held that a dual citizen under the law does not have to reside in the Philippines to be able to vote in our elections. The decision noted that "there is no provision in the dual citizenship law—RA 9225—requiring "duals" to actually establish residence and physically stay in the Philippines first before they can exercise their right to vote."

There is, in fact, Sec. 5(1) of the law, which says that "those intending to exercise their right of suffrage must meet the requirements under Section 1, Article V of the Constitution," providing that Filipino voters shall, among other qualifications, "have resided in the Philippines for at least one year and in the place where they propose to vote for at least six months immediately preceding the election."

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[26] 497 SCRA 649 (2006).

APPENDI

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REPUBLIC OF THE P

PREAMB

We, the sovereign Filipino peop
mighty God, in order to build a just an
lish a Government that shall embody
promote the common good, conserve an
secure to ourselves and our posterity t
and democracy under the rule of law a
freedom, love, equality, and peace, do
Constitution.

ARTICLE

NATIONAL TER

The national territory comprises
with all the islands and waters emb
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and other submarine areas. The water
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RTICLE II

NCIPLES AND STATE POLICIES

INCIPLES

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national territory.

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of Church and State shall be inviola-

E POLICIES

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promote a just and dynamic social or-
erity and independence of the nation

and free the people from poverty throu
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living, and an improved quality of life fo

Sec. 10. The State shall promot
of national development.

Sec. 11. The state values the di
and guarantees full respect for human r

Sec. 12. The State recognizes th
shall protect and strengthen the family
institution. It shall equally protect the l
of the unborn from conception. The na
duty of parents in the rearing of the you
development of moral character shall
Government.

Sec. 13. The State recognizes th
nation-building and shall promote and
spiritual, intellectual, and social well-be
youth patriotism and nationalism, and
in public and civic affairs.

Sec. 14. The State recognizes th
building, and shall ensure the fundame
of women and men.

Sec. 15. The State shall protec
health of the people and instill health co

Sec. 16. The State shall protect
people to a balanced and healthful ecolo
and harmony of nature.

Sec. 17. The State shall give p
and technology, arts, culture, and spo
nationalism, accelerate social progress
liberation and development.

Sec. 18. The State affirms labor
force. It shall protect the rights of wor
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Sec. 19. The State shall develop
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Sec. 20. The State recognizes th
private sector, encourages private ente
tives to needed investments.

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ısonable conditions prescribed by law,
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ublic interest.

ꞅTICLE III

OF RIGHTS

hall be deprived of life, liberty, or pro-
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e people to be secure in their persons,
gainst unreasonable searches and sei-
l for any purpose shall be inviolable,
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ned personally by the judge after ex-
ırmation of the complainant and the
ıd particularly describing the place to
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cy of communication and correspon-
ɛpt upon lawful order of the court, or
quires otherwise as prescribed by law.

(2) Any evidence obtained in viol
section shall be inadmissible for any pu

Sec. 4. No law shall be passe
speech, of expression, or of the press
peaceably to assemble and petition th
grievances.

Sec. 5. No law shall be made re
religion, or prohibiting the free exerci
and enjoyment of religious profession
crimination or preference, shall forever
shall be required for the exercise of civil

Sec. 6. The liberty of abode and
the limits prescribed by law shall not b
ful order of the court. Neither shall th
except in the interest of national secu
health, as may be provided by law.

Sec. 7. The right of the people
public concern shall be recognized. Acc
documents, and papers pertaining to
decisions, as well as to government res
policy development, shall be afforded
limitations as may be provided by law.

Sec. 8. The right of the people,
the public and private sectors, to form
ties for purposes not contrary to law sh

Sec. 9. Private property shall
without just compensation.

Sec. 10. No law impairing the o
passed.

Sec. 11. Free access to the cou
and adequate legal assistance shall no
reason of poverty.

Sec. 12. (1) Any person under
sion of an offense shall have the right
remain silent and to have competent a
erably of his own choice. If the person
counsel, he must be provided with
waived except in writing and in the pre

(2) No torture, force, violence,
other means which vitiate the free wi

ary, *incommunicado,* or other similar
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admission obtained in violation of this
nadmissible in evidence against him.

de for penal and civil sanctions for vio-
as compensation to and rehabilitation
practices, and their families.

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when evidence of guilt is strong, shall,
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shall be held to answer for a criminal
law.

secutions, the accused shall be pre-
ntrary is proved, and shall enjoy the
nd counsel, to be informed of the na-
ation against *him,* to have a speedy,
meet the witnesses face to face, and to
ecure the attendance of witnesses and
his behalf. However, after arraign-
thstanding the absence of the accused
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of the writ of *habeas corpus* shall not
of invasion or rebellion when the pub-

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shall be detained solely by reason of
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itude in any form shall exist except as
ereof the party shall have been duly

Sec. 19. (1) Excessive fines shal
degrading or inhuman punishment infli
penalty be imposed, unless for compelli
crimes, the Congress hereafter, provid
already imposed shall be reduced to *recl*

(2) The employment of physical,
punishment against any prisoner or de
dard or inadequate penal facilities unde
be dealt with by law.

Sec. 20. No person shall be i
payment of a poll tax.

Sec. 21. No person shall be twi
ment for the same offense. If an act i
ordinance, conviction or acquittal unde
to another prosecution for the same act.

Sec. 22. No *ex post facto* law or
acted.

ARTICLE I

CITIZENSH

Section 1. The following are citi

(1) Those who are citizens of t
the adoption of this Constit

(2) Those whose fathers or mot
ippines;

(3) Those born before January
who elect Philippine citizen
majority; and

(4) Those who are naturalized i

Sec. 2. Natural-born citizens a
the Philippines from birth without h
acquire or perfect their Philippine citiz
ippine citizenship in accordance with p
shall be deemed natural-born citizens.

Sec. 3. Philippine citizenship m
the manner provided by law.

Philippines who marry aliens shall re-
s by their act or omission they are
e renounced it.

e of citizens is inimical to the national
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RTICLE V

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hall provide a system for securing the
allot as well as a system for absentee
broad.

design a procedure for the disabled
thout the assistance of other persons.
owed to vote under existing laws and
on Elections may promulgate to pro-

TICLE VI

ATIVE DEPARTMENT

ive power shall be vested in the Con-
shall consist of a Senate and a House
he extent reserved to the people by the
erendum.

all be composed of twenty-four Sena-
rge by the qualified voters of the Phil-
law.

l be a Senator unless he is a natural-
, and, on the day of the election, is at
able to read and write, a registered
hilippines for not less than two years
of the election.

Sec. 4. The term of office of the
and shall commence, unless otherwise p
the thirtieth day of June next following t

No Senator shall serve for more t
Voluntary renunciation of the office for
be considered as an interruption in the
the full term for which he was elected.

Sec. 5. (1) The House of Represe
of not more than two hundred and fifty
fixed by law, who shall be elected from
tioned among the provinces, cities, an
area in accordance with the number of t
and on the basis of a uniform and progr
as provided by law, shall be elected thr
registered national, regional, and sectora

(2) The party-list representatives
centum of the total number of representa
the party list. For three consecutive te
this Constitution, one-half of the seats
sentatives shall be filled, as provided by
from the labor, peasant, urban poor, in
ties, women, youth, and such other sec
law, except the religious sector.

(3) Each legislative district shall
ble, contiguous, compact and adjacent
population of at least hundred fifty thou
have at least one representative.

(4) Within three years following
the Congress shall make a reapportion
based on the standards provided in this

Sec. 6. No person shall be a Me
sentatives unless he is a natural-born ci
on the day of the election, is at least twe
read and write, and except the party-l
tered voter in the district in which he sh
thereof for a period of not less than one
the day of the election.

Sec. 7. The Members of the Ho
be elected for a term of three years whi
wise provided by law, at noon on the
following their election.

ıse of Representatives shall serve for
terms. Voluntary renunciation of the
shall not be considered as an interrup-
rvice for the full term for which he was

ise provided by law, the regular elec-
Members of the House of Representa-
nd Monday of May.

ancy in the Senate or in the House of
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law, but the Senator or Member of the
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of Senators and Members of the House
etermined by law. No increase in said
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Member of the House of Representa-
unishable by not more than six years
from arrest while the Congress is in
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debate in the Congress or in any com-

of the Senate and the House of Repre-
ption of office, make a full disclosure of
interests. They shall notify the House
lict of interest that may arise from the
n of which they are authors.

or Member of the House of Representa-
ice or employment in the Government,
or instrumentality thereof, including
lled corporations or their subsidiaries,
rfeiting his seat. Neither shall he be
h may have been created or the emolu-
ng the term for which he was elected.

or Member of the House of Representa-
as counsel before any court of justice or
ls, or quasi-judicial and other adminis-
he, directly or indirectly, be interested
ith, or in any franchise or special privi-

lege granted by the Government, or a
instrumentality thereof, including any
trolled corporation, or its subsidiary, du
shall not intervene in any matter befor
ment for his pecuniary benefit or where h
on account of his office.

Sec. 15. The Congress shall conv
fourth Monday of July for its regular ses
is fixed by law, and shall continue to be
of days as it may determine until thirty
its next regular session, exclusive of Sat
holidays. The President may call a specia

Sec. 16. (1) The Senate shall e
House of Representatives its Speaker, b
respective Members.

Each House shall choose such oth
necessary.

(2) A majority of each House sha
business, but a smaller number may ad
may compel the attendance of absent Me
under such penalties, as such House may

(3) Each House may determine t
punish its Members for disorderly beha
rence of two-thirds of all its Members, su
penalty of suspension, when imposed, sh

(4) Each House shall keep a Jou
from time to time publish the same, exce
its judgment, affect national security; an
question shall, at the request of one-fifth
entered in the Journal.

Each House shall also keep a Recor

(5) Neither House during the ses
without the consent of the other, adjour
nor to any other place than that in wh
sitting.

Sec. 17. The Senate and the Ho
each have an Electoral Tribunal which
contests relating to the election, returns
respective Members. Each Electoral Tr
nine Members, three of whom shall be Ju

Justice, and the remaining six shall be
House of Representatives, as the case
n the basis of proportional representa-
and the parties or organizations regis-
stem represented therein. The senior
al shall be its Chairman.

a Commission on Appointments con-
Senate, as *ex officio* Chairman, twelve
rs of the House of Representatives,
basis of proportional representation
d parties or organizations registered
epresented therein. The Chairman of
, except in case of a tie. The Commis-
ments submitted to it within thirty
from their submission. The Commis-
te of all the Members.

Tribunals and the Commission on Ap-
d within thirty days after the Senate
tives shall have been organized with
and the Speaker. The Commission on
while the Congress is in session, at
majority of all its Members, to dis-
ons as are herein conferred upon it.

nd books of accounts of the Congress
to the public in accordance with law,
ed by the Commission on Audit which
nized list of amounts paid to and ex-
er.

the House of Representatives or any
ay conduct inquiries in aid of legisla-
ly published rules of procedure. The
or affected by such inquiries shall be

departments may upon their own ini-
he President, or upon the request of
ach House shall provide, appear before
on any matter pertaining to their de-
shall be submitted to the President of
the House of Representatives at least
uled appearance. Interpellations shall
stions, but may cover matters related

thereto. When the security of the Sta
requires and the President so states in v
be conducted in executive session.

Sec. 23. (1) The Congress, by a
Houses in joint session assembled, votir
sole power to declare the existence of a s

(2) In times of war or other natio
may, by law, authorize the President, f
ject to such restrictions as it may presc
essary and proper to carry out a decla
sooner withdrawn by resolution of the
cease upon the next adjournment thereo

Sec. 24. All appropriation, reve
thorizing increase of the public debt, b
private bills shall originate exclusively
tives, but the Senate may propose or con

Sec. 25. (1) The Congress may
tions recommended by the President for
ment as specified in the budget. The fo
preparation of the budget shall be presc

(2) No provision or enactment sh
eral appropriations bill unless it relates
lar appropriation therein. Any such pro
limited in its operation to the appropria

(3) The procedure in approving
gress shall strictly follow the procedure
for other departments and agencies.

(4) A special appropriations bill
which it is intended, and shall be suppo
able as certified by the National Trea
corresponding revenue proposal therein.

(5) No law shall be passed autho
priations; however, the President, the
Speaker of the House of Representativ
Supreme Court, and the heads of Cons
by law, be authorized to augment any it
tions law for their respective offices fr
their respective appropriations.

(6) Discretionary funds appropr
shall be disbursed only for public purpo

such guidelines as may be prescribed

y fiscal year, the Congress shall have
propriations bill for the ensuing fiscal
ons law for the preceding fiscal year
d shall remain In force and effect until
l is passed by the Congress.

ll passed by the Congress shall em-
hall be expressed in the title thereof.

ither House shall become a law unless
on separate days, and printed copies
been distributed to its Members three
pt when the President certifies to the
actment to meet a public calamity or
ading of a bill, no amendment thereto
e thereon shall be taken immediately
ays entered in the Journal.

l passed by the Congress shall, before
ed to the President. If he approves the
wise, he shall veto it and return the
the House where it originated, which
large in its Journal and proceed to
reconsideration, two-thirds of all the
agree to pass the bill, it shall be sent,
to the other House by which it shall
d if approved by two-thirds of all the
all become a law. In all such cases, the
determined *by yeas* or *nays,* and the
g for or against shall be entered in its
communicate his veto of any bill to the
hin thirty days after the date of receipt
come a law as if he had signed it.

l have the power to veto any particular
tion, revenue, or tariff bill, but the veto
ms to which he does not object.

of taxation shall be uniform and equi-
lve a progressive system of taxation.

, by law, authorize the President to fix
subject to such limitations and restric-
f rates, import and export quotas, ton-

nage and wharfage dues, and other dut
framework of the national development pr

(3) Charitable institutions, church
vents appurtenant thereto, mosques, nor
lands, buildings, and improvements, act
sively used for religious, charitable, or ed
exempt from taxation.

(4) No law granting any tax exem
out the concurrence of a majority of all
gress.

Sec. 29. (1) No money shall be pa
cept in pursuance of an appropriation ma

(2) No public money or property
plied, paid, or employed, directly or indire
support of any sect, church, denominatio
system of religion, or of any priest, pr
religious teacher, or dignitary as such,
preacher, minister, or dignitary is assigne
any penal institution, or government orph

(3) All money collected on any tax
shall be treated as a special fund and pai
If the purpose for which a special fund wa
or abandoned, the balance, if any, shall b
funds of the Government.

Sec. 30. No law shall be passed i
risdiction of the Supreme Court as pro
without its advice and concurrence.

Sec. 31. No law granting a title o
enacted.

Sec. 32. The Congress shall, as e
a system of initiative and referendum, an
whereby the people can directly propose
or reject any act or law or part thereof
local legislative body after the registra
signed by at least ten *per centum* of the
voters, of which every legislative district
least three *per centum* of the registered v

TICLE VII

E DEPARTMENT

ve power shall be vested in the Presi-

be elected President unless he is a hilippines, a registered voter, able to years of age on the day of the election, nes for at least ten years immediately

a Vice-President who shall have the of office and be elected with and in the nt. He may be removed from office in dent.

be appointed as a Member of the Cabi- s no confirmation.

and the Vice-President shall be elected a term of six years which shall begin of June next following the day of the of the same date six years thereafter. gible for any reelection. No person who nd has served as such for more than for election to the same office at any

serve for more than two successive n of the office for any length of time interruption in the continuity of the ich he was elected.

ded by law, the regular election for shall be held on the second Monday of

ction for President and Vice-President, f canvassers of each province or city, ngress, directed to the President of the ertificates of canvass, the President of han thirty days after the day of the tes in the presence of the Senate and in joint public session, and the Con- the authenticity and due execution d by law, shall canvass the votes.

The person having the highest nu
claimed elected, but in case two or mo
highest number of votes, one of them s
the vote of a majority of all the Member
gress, voting separately.

The Congress shall promulgate its
the certificates.

The Supreme Court, sitting *en ba*
all contests relating to the election, retu
President or Vice-President, and may
purpose.

Sec. 5. Before they enter on the
President, the Vice-President, or the Act
following oath or affirmation:

> "I do solemnly swear (or affi
> conscientiously fulfill my dutie
> President or Acting President) of t
> defend its Constitution, execute
> man, and consecrate myself to th
> help me God."
>
> (In case of affirmation, last senten

Sec. 6. The President shall hav
salaries of the President and Vice-Presi
law and shall not be decreased during
said compensation shall take effect unt
term of the incumbent during which s
They shall not receive during their te
from the Government or any other sourc

Sec. 7. The President-elect and t
assume office at the beginning of their te

If the President-elect fails to qua
shall act as President until the Presiden

If a President shall not have been
elect shall act as President until a Presi
and qualified.

If at the beginning of the term of
elect shall have died or shall have becon
Vice-President-elect shall become Presid

Vice-President shall have been chosen
here both shall have died or become
esident of the Senate or. in case of his
House of Representatives shall act as
or a Vice-President shall have been

law, provide for the manner in which
shall be selected until a President or a
alified, in case of death, permanent
fficials mentioned in the next preced-

h, permanent disability, removal from
resident, the Vice-President shall be-
he unexpired term. In case of death,
from office, or resignation of both the
the President of the Senate or, in case
f the House of Representatives, shall
he President or Vice-President shall
d.

aw, provide who shall serve as Presi-
nent disability, or resignation of the
erve until the President or the Vice-
cted and qualified, and be subject to
rs and disqualifications as the Acting

is a vacancy in the Office of the Vice-
which he was elected, the President
ent from among the Members of the
resentatives who shall assume office
rity vote of all the Members of both
separately.

shall, at ten o'clock in the morning of
cy in the offices of the President and
in accordance with its rules without
days enact a law calling for a special
and a Vice-President to be held not
later than sixty days from the time of
ch special election shall be deemed
ection 26, Article VI of this Constitu-
n its approval on third reading by the
the special election shall be charged

against any current appropriations and
requirements of paragraph 4, Section 25,
tion. The convening of the Congress ca
special election postponed. No special el
vacancy occurs within eighteen months
presidential election.

Sec. 11. Whenever the President
of the Senate and the Speaker of the H
written declaration that he is unable to
duties of his office, and until he transmit
tion to the contrary, such powers and du
the Vice-President as Acting President.

Whenever a majority of all the Me
mit to the President of the Senate and to
Representatives their written declarat
unable to discharge the powers and du
President shall immediately assume th
office as Acting President.

Thereafter, when the President tr
the Senate and to the Speaker of the H
written declaration that no inability ex
powers and duties of his office. Meanwh
the Members of the Cabinet transmit w
dent of the Senate and to the Speaker o
tives their written declaration that the
charge the powers and duties of his offic
the issue. For that purpose, the Congres
in session, within forty-eight hours, in a
without need of call.

If the Congress, within ten days a
ten declaration, or, if not in session, wi
required to assemble, determines by
Houses, voting separately, that the Pres
the powers and duties of his office, the
President; otherwise, the President sh
powers and duties of his office.

Sec. 12. In case of serious illness
shall be informed of the state of his h
Cabinet in charge of national security a
Chief of Staff of the Armed Forces of th
denied access to the President during su

;, Vice-President, the Members of the · assistants shall not, unless otherwise , hold any other office or employment all not, during said tenure, directly or profession, participate in any business, any contract with, or in any franchise, y the Government or any subdivision, ereof, including government-owned or heir subsidiaries. They shall strictly conduct of their office.

by consanguinity or affinity within the esident shall not during his tenure be e Constitutional Commissions, or the as Secretaries, Undersecretaries, chair- offices, including government-owned or ir subsidiaries.

extended by an Acting President shall oked by the elected President within ion or reassumption of office.

mmediately before the next presiden- end of his term, a President or Acting pointments, except temporary appoint- when continued vacancies therein will langer public safety.

shall nominate and, with the consent ments, appoint the heads of the execu- rs, other public ministers and consuls, es from the rank of colonel or naval ose appointments are vested in him in so appoint all other officers of the Gov- are not otherwise provided for by law, uthorized by law to appoint. The Con- appointment of other officers lower in n the courts, or in the heads of depart- , or boards.

ve the power to make appointments ress, whether voluntary or compulsory, be effective only until disapproval by ents or until the next adjournment of

Sec. 17. The President shall hav
departments, bureaus, and offices. He sh
faithfully executed.

Sec. 18. The President shall be
all armed forces of the Philippines and
sary, he may call out such armed forces
less violence, invasion or rebellion. In c
when the public safety requires it, he m
ing sixty days, suspend the privilege of
place the Philippines or any part thereo
forty-eight hours from the proclamatio
pension of the privilege of the writ of *h*
shall submit a report in person or in w
Congress, voting jointly, by a vote of a
Members in regular or special session,
tion or suspension, which revocation sh
President. Upon the initiative of the Pre
the same manner, extend such procla
period to be determined by the Congress
shall persist and public safety requires i

The Congress, if not in session, sha
following such proclamation or suspens
with its rules without need of a call.

The Supreme Court may review, i
filed by any citizen, the sufficiency of th
mation of martial law or the suspensio
or the extension thereof, and must pro
within thirty days from its filing.

A state of martial law does not s
Constitution, nor supplant the functio
legislative assemblies, nor authorize th
on military courts and agencies over civ
able to function, nor automatically suspe

The suspension of the privilege of
persons judicially charged for rebellion
directly connected with invasion.

During the suspension of the privi
thus arrested or detained shall be judi
days, otherwise he shall be released.

Sec. 19. Except in cases of imp
provided in this Constitution, the Preside

remit fines and forfeitures, after con-

power to grant amnesty with the con-
ıe Members of the Congress.

t may contract or guarantee foreign
olic of the Philippines with the prior
Board, and subject to such limitations
ne Monetary Board shall, within thirty
ıarter of the calendar year, submit to
ɔrt of its decisions on applications for
ranteed by the Government or govern-
rporations which would have the effect
and containing other matters as may

nternational agreement shall be valid
d in by at least two-thirds of all the

shall submit to the Congress within
f every regular session, as the basis of
, a budget of expenditures and sources
s from existing and proposed revenue

shall address the Congress at the
He may also appear before it at any

ICLE VIII

DEPARTMENT

power shall be vested in one Supreme
as may be established by law.

he duty of the courts of justice to set-
ing rights which are legally demand-
determine whether or not there has
tion amounting to lack or excess of
ny branch or instrumentality of the

hall have the power to define, pre-
diction of the various courts but may

not deprive the Supreme Court of its juri
ated in Section 5 hereof.

No law shall be passed reorganizin
der-mines the security of tenure of its Me

Sec. 3. The Judiciary shall enjoy
tions for the Judiciary may not be reduc
the amount appropriated for the previou
shall be automatically and regularly rele

Sec. 4. (1) The Supreme Court s
Justice and fourteen Associate Justices.
discretion, in divisions of three, five, or s
shall be filled within ninety days from th

(2) All cases involving the constit
national or executive agreement, or law,
Supreme Court *en banc,* and all other c
of Court are required to be heard *en ban*
the constitutionality, application, or o
crees, proclamations, orders, instructio
regulations, shall be decided with the c
the Members who actually took part i
issues in the case and voted thereon.

(3) Cases or matters heard by a
resolved with the concurrence of a ma
actually took part in the deliberations o
voted thereon, and in no case, without
three of such Members. When the requi
the case shall be decided *en banc:* Pr
principle of law laid down by the cour
banc or in division may be modified or
sitting *en banc.*

Sec. 5. The Supreme Court shall

(1) Exercise original jurisdiction
sadors, other public ministers
tions for *certiorari,* prohibitio
and *habeas corpus.*

(2) Review, revise, reverse, modif
tiorari as the law or the Rule
judgments and orders of lower

h the constitutionality or validity of any
onal or executive agreement, law, presi-
proclamation, order, instruction, ordi-
ion is in question.

ng the legality of any tax, impost, as-
l, or any penalty imposed in relation

h the jurisdiction of any lower court is in

s in which the penalty imposed is *reclu-*
higher.

h only an error or question of law is in-

udges of lower courts to other stations
nay require. Such temporary assign-
ed six months without the consent of

nue or place of trial to avoid a miscar-

ncerning the protection and enforce-
al rights, pleading, practice, and pro-
the admission to the practice of law,
nd legal assistance to the underprivi-
all provide a simplified and inexpen-
e speedy disposition of cases, shall be
s of the same grade, and shall not di-
modify substantive rights. Rules of
courts and quasi-judicial bodies shall
ss disapproved by the Supreme Court.

and employees of the Judiciary in ac-
vil Service Law.

Court shall have administrative su-
e personnel thereof.

shall be appointed Member of the Su-
legiate court unless he is a natural-
s. A Member of the Supreme Court
age, and must have been for fifteen
er court or engaged in the practice of

(2) The Congress shall prescribe
lower courts, but no person may be appo
is a citizen of the Philippines and a memb

(3) A Member of the Judiciary
competence, integrity, probity, and inde

Sec. 8. (1) A Judicial and Bar
der the supervision of the Supreme C
Justice as *ex officio* Chairman, the Secre
sentative of the Congress as *ex officio* M
the Integrated Bar, a professor of law,
preme Court, and a representative of the

(2) The regular members of the
the President for a term of four years
mission on Appointments. Of the Me
representative of the Integrated Bar sh
professor of law for three years, the re
and the representative of the private sec

(3) The Clerk of the Supreme Co
officio of the Council and shall keep a re

(4) The regular Members of the
emoluments as may be determined b
Supreme Court shall provide in its annu
for the Council.

(5) The Council shall have the
mending appointees to the Judiciary.
functions and duties as the Supreme Co

Sec. 9. The Members of the Su
lower courts shall be appointed by the
least three nominees prepared by the
every vacancy. Such appointments need

For the lower courts, the Presid
ments within ninety days from the subn

Sec. 10. The salary of the Chief
Justices of the Supreme Court, and of ju
fixed by law. During their continuance
not be decreased.

Sec. 11. The Members of the S
lower courts shall hold office during go
the age of seventy years or become in
duties of their office. The Supreme C

ower courts, or order their dismissal by
lembers who actually took part in the
the case and voted thereon.

of the Supreme Court and of other
all not be designated to any agency
dministrative functions.

ns of the Supreme Court in any case
banc or in division shall be reached in
assigned to a Member for the writing
certification to this effect signed by the
l and a copy thereof attached to the
l upon the parties. Any Member who
abstained from a decision or resolution
for. The same requirements shall be
e courts.

hall be rendered by any court without
d distinctly the facts and the law on

r motion for reconsideration of a deci-
sed due course or denied without stat-

or matters filed after the effectivity of
cided or resolved within twenty-four
n for the Supreme Court, and, unless
rt, twelve months for all lower colle-
for all other lower courts.

all be deemed submitted for decision
the last pleading, brief, or memoran-
ourt or by the court itself.

of the corresponding period, a certifi-
y the Chief Justice or the presiding
d and a copy thereof attached to the
nd served upon the parties. The certi-
ision or resolution has not been ren-
iod.

n of the applicable mandatory period,
such responsibility as may have been
of, shall decide or resolve the case or
etermination, without further delay.

Sec. 16. The Supreme Court shal
the opening of each regular session of t
President and the Congress an annual re
activities of the Judiciary.

ARTICLE IX

CONSTITUTIONAL COM

A. COMMON PROV

Section 1. The Constitutional Co
in-dependent, are the Civil Service Comm
Elections, and the Commission on Audit.

Sec. 2. No Member of a Constit
during his tenure, hold any other offic
shall he engage in the practice of any
management or control of any business
affected by the functions of his office,
interested, directly or indirectly, in an
franchise or privilege granted by the Gov
sions, agencies, or instrumentalities, in
or controlled corporations or their subsidi

Sec. 3. The salary of the Chairm
shall be fixed by law and shall not be dec

Sec. 4. The Constitutional Comm
officials and employees in accordance wit

Sec. 5. The Commission shall en
approved annual appropriations shall b
larly released.

Sec. 6. Each Commission *en ban*
rules concerning pleadings and practice
offices. Such rules however shall not di
substantive rights.

Sec. 7. Each Commission shall d
all its Members any case or matter bro
days from the date of its submission fo
case or matter is deemed submitted for
the filing of the last pleading brief, or m
rules of the Commission or by the Comm
wise provided by this Constitution or by

ay be brought to the Supreme Court on rty within thirty days from receipt of a

ion shall perform such other functions

SERVICE COMMISSION

vil service shall be administered by the mposed of a Chairman and two Com- ral-born citizens of the Philippines and, ment, at least thirty-five years of age, blic administration, and must not have ctive position in the elections immedi- ment.

d the Commissioners shall be appointed consent of the Commission on Appoint- years without reappointment. Of those an shall hold office for seven years, a s, and another Commissioner for three it. Appointment to any vacancy shall be of the predecessor. In no case shall any signated in a temporary or acting capac-

l service embraces all branches, subdivi- d agencies of the Government, including olled corporations with original charters.

the civil service shall be made only ac- to be determined, as far as practicable, which are policy-determining, primarily ical, by competitive examination.

loyee of the civil service shall be removed se provided by law.

loyee in the civil service shall engage, di- electioneering or partisan political cam-

-organization shall not be denied to gov-

loyees of the Government shall be given provided by law.

Sec. 3. The Civil Service Commis
nel agency of the Government, shall est
adopt measures to promote morale, effic
ness, progressiveness, and courtesy in
strengthen the merit and rewards sy
resources development programs for all
tutionalize a management climate cond
ity. It shall submit to the President a
report on its personnel programs.

Sec. 4. All public officers and en
or affirmation to uphold and defend this

Sec. 5. The Congress shall provi
compensation of government officials an
in government-owned or controlled corp
ters, taking into account the nature of th
to, and the qualifications required for th

Sec. 6. No candidate who has
within one year after such election, be a
Government or any government-owned
in any of their subsidiaries.

Sec. 7. No elective official shall
or designation in any capacity to any pu
his tenure.

Unless otherwise allowed by law o
his position, no appointive official sha
employment in the Government or an
strumentality thereof, including gover
corporations or their subsidiaries.

Sec. 8. No elective or appointiv
shall receive additional, double, or in
specifically authorized by law, nor accep
Congress, any present, emolument, offi
any foreign government.

Pensions or gratuities shall not
double, or indirect compensation.

C. THE COMMISSION O

Section 1. (1) There shall be
com-posed of a Chairman and six Comm
ral-born citizens of the Philippines an

years of age, holders of a college de- candidates for any elective position in ections. However, a majority thereof, ll be members of the Philippine Bar practice of law for at least ten years.

the Commissioners shall be appointed nsent of the Commission on Appoint- ars without reappointment. Of those s shall hold office for seven years, two ne last Members for three years, with- nt to any vacancy shall be only for the ssor. In no case shall any Member be mporary or acting capacity.

n on Elections shall exercise the fol-

ster all laws and regulations relative plebiscite, initiative, referendum, and

original jurisdiction over all contests rns, and qualifications of all elective fficials, and appellate jurisdiction over municipal officials decided by trial or involving elective barangay officials d jurisdiction.

or rulings of the Commission on elec- municipal and barangay offices shall pealable.

involving the right to vote, all ques- ding determination of the number and ointment of election officials and in- ters.

concurrence of the President, law en- mentalities of the Government, includ- hilippines, for the exclusive purpose of eaceful, and credible elections.

cient publication, political parties, or- h, in addition to other requirements, program of government; and accredit on on Elections. Religious denomina- gistered. Those which seek to achieve their goals through violence or unlawfu and adhere to this Constitution, or w foreign government shall likewise be ref

Financial contributions from fore agencies to political parties, organizatio related to elections constitute interfere when accepted shall be an additional g their registration with the Commission ties that may be prescribed by law.

(6) File, upon a verified complai petitions in court for inclusion or excl and, where appropriate, prosecute cas laws, including acts or omissions cons fenses, and malpractices.

(7) Recommend to the Congress mize election spending, including limit ganda materials shall be posted, and forms of election frauds, offenses, malpr dacies.

(8) Recommend to the President employee it has deputized, or the impo nary action, for violation or disregard of tive, order, or decision.

(9) Submit to the President and sive report on the conduct of each el referendum, or recall.

Sec. 3. The Commission on Elec two divisions, and shall promulgate its expedite disposition of election cases, controversies. All such election cases sh division, provided that motions for recon be decided by the Commission *en banc.*

Sec. 4. The Commission may, du pervise or regulate the enjoyment or ut permits for the operation of transportati media of communication or informatio leges, or concessions granted by the Gov agency, or instrumentality thereof, inclu or controlled corporation or its subsidia lation shall aim to ensure equal oppor the right to reply, including reasonab

is and forums among candidates in
of holding free, orderly, honest, peace-

nnesty, parole, or suspension of sen-
laws, rules, and regulations shall be
hout the favorable recommendation of

en party system shall be allowed to
oice of the people, subject to the provi-

n favor of a political party, organiza-
l, except for those registered under the
n this Constitution.

s, or organizations or coalitions regis-
stem, shall not be represented in the
oards of election inspectors, boards of
odies. However, they shall be entitled
ordance with law.

se fixed by the Commission in special
commence ninety days before the day
days thereafter.

didates for any public office shall be
ent and discrimination.

d by the Commission as necessary to
g regular and special elections, plebi-
and recalls, shall be provided in the
ons and, once approved, shall be re-
ertification by the Chairman of the

MISSION ON AUDIT

hall be a Commission on Audit com-
Commissioners, who shall be natural-
es, and, at the time of their appoint-
s of age, certified public accountants
f auditing experience, or members of
een engaged in the practice of law for
ot have been candidates for any elec-
immediately preceding their appoint-

ment. At no time shall all Members of the
same profession.

(2) The Chairman and the Commi
by the President with the consent of th
ments for a term of seven years withou
first appointed, the Chairman shall hold
Commissioner for five years, and the oth
years, without reappointment. Appointm
only for the unexpired portion of the ter
case shall any Member be appointed or d
acting capacity.

Sec. 2. (1) The Commission on A
authority, and duty to examine, audit, a
taining to the revenue and receipts of, a
funds and property, owned or held in tru
Government, or any of its subdivisions,
ties, including government-owned or co
original charters, and on a post-audit bas
commissions and offices that have bee
under this Constitution; (b) autonomous
ties; (c) other government-owned or contr
subsidiaries; and (d) such non-governme
sidy or equity, directly or indirectly, fro
ment, which are required by law or the
mit to such audit as a condition of su
where the internal control system of the
quate, the Commission may adopt such
rary or special pre-audit, as are necessar
the deficiencies. It shall keep the gener
ment and, for such period as may be pro
vouchers and other supporting papers pe

(2) The Commission shall have ex
the limitations in this Article, to define
examination, establish the techniques a
for, and promulgate accounting and aud
including those for the prevention and
unnecessary, excessive, extravagant, o
tures, or uses of government funds and p

Sec. 3. No law shall be passed e
Government or its subsidiary in any gui

he jurisdiction of the Commission on

on shall submit to the President and
fixed by law, an annual report cover-
nd operation of the Government, its
instrumentalities, including govern-
porations, and non-governmental enti-
l recommend measures necessary to
d efficiency. It shall submit such other
law.

RTICLE X

GOVERNMENT

L PROVISIONS

al and political subdivisions of the Re-
the provinces, cities, municipalities,
e autonomous regions in Muslim Min-
ereinafter provided.

and political subdivisions shall enjoy

shall enact a local government code
ore responsive and accountable local
ed through a system of decentraliza-
s of recall, initiative, and referendum,
local government units their powers,
s, and provide for the qualifications,
oval, term, salaries, powers and func-
als, and all other matters relating to
of the local units.

f the Philippines shall exercise gen-
vernments. Provinces with respect to
alities, and cities and municipalities
rangays shall ensure that the acts of
nin the scope of their prescribed pow-

rnment unit shall have the power to
venues and to levy taxes, fees, and
nes and limitations as the Congress

may provide, consistent with the basic
Such taxes, fees, and charges shall acc
governments.

Sec. 6. Local government units s
determined by law, in the national taxe
cally released to them.

Sec. 7. Local governments shall
share in the proceeds of the utilization
tional wealth within their respective are
by law, including sharing the same with
direct benefits.

Sec. 8. The term of office of ele
barangay officials, which shall be detern
years and no such official shall serve fo
tive terms. Voluntary renunciation of t
time shall not be considered as an inter
his service for the full term for which he

Sec. 9. Legislative bodies of loc
sectoral representation as may be prescri

Sec. 10. No province, city, munic
created, divided, merged, abolished, or
altered, except in accordance with the
Local Government Code and subject to a
votes cast in a plebiscite in the political

Sec. 11. The Congress may, by la
tan political subdivisions, subject to a p
tion 10 hereof. The component cities an
their basic autonomy and shall be entit
tives and legislative assemblies. The jur
authority that will thereby be created s
vices requiring coordination.

Sec. 12. Cities that are highly u
law, and component cities whose charte
voting for provincial elective officials,
province. The voters of component citi
charters contain no such prohibition, sh
right to vote for elective provincial offici

Sec. 13. Local government units
solidate or coordinate their efforts, serv
poses commonly beneficial to them in ac

t shall provide for regional develop-
· bodies composed of local government
epartments and other government of-
rom non-governmental organizations
s of administrative decentralization to
he units therein and to accelerate the
and development of the units in the

MOUS REGIONS

e created autonomous regions in Mus-
dilleras consisting of provinces, cities,
cal areas sharing common and distinc-
ritage, economic and social structures,
ristics within the framework of this
al sovereignty as well as territorial
Philippines.

t shall exercise general supervision
sure that laws are faithfully executed.

functions, and responsibilities not
or by law to the autonomous regions
Government.

shall enact an organic act for each
assistance and participation of the
sion composed of representatives ap-
a list of nominees from multisectoral
define the basic structure of govern-
ng of the executive department and
which shall be elective and representa-
units. The organic acts shall likewise
h personal, family, and property law
e provisions of this Constitution and

nomous region shall be effective when
otes cast by the constituent units in a
e, provided that only provinces, cities,
favorably in such plebiscite shall be
gion.

gress elected under this Constitution
from the time of organization of both

Houses, pass the organic acts for the aut
Mindanao and the Cordilleras.

Sec. 20. Within its territorial juri
provisions of this Constitution and natio
autonomous regions shall provide for legi

(1) Administrative organization;

(2) Creation of sources of revenues

(3) Ancestral domain and natural

(4) Personal, family, and property

(5) Regional urban and rural plan

(6) Economic, social, and tourism

(7) Educational policies;

(8) Preservation and developmen
and

(9) Such other matters as may b
promotion of the general welfare of the p

Sec. 21. The preservation of pea
gions shall be the responsibility of the
shall be organized, maintained, superv
dance with applicable laws. The defense
shall be the responsibility of the Nationa

ARTICLE X

ACCOUNTABILITY OF PU

Section 1. Public office is a publ
employees must at all times be accou
them with utmost responsibility, integ
act with patriotism and justice, and lead

Sec. 2. The President, the Vice-
the Supreme Court, the Members of t
sions, and the Ombudsman may be r
peachment for, and conviction of, culpa
tion, treason, bribery, graft and corru
betrayal of public trust. All other public
be removed from office as provided by la

Sec. 3. (1) The House of Repres
clusive power to initiate all cases of imp

t for impeachment may be filed by any
resentatives or by any citizen upon a
any Member thereof, which shall be
ness within ten session days, and re-
e within three session days thereafter.
and by a majority vote of all its Mem-
o the House within sixty session days
ith the corresponding resolution. The
for consideration by the House within
hereof.

one-third of all the Members of the
er to affirm a favorable resolution with
of the Committee, or override its con-
ch Member shall be recorded.

complaint or resolution of impeach-
hird of all the Members of the House,
Articles of Impeachment, and trial by
ceed.

roceedings shall be initiated against
ce within a period of one year.

ve the sole power to try and decide all
sitting for that purpose, the Senators
n. When the President of the Philip-
stice of the Supreme Court shall pre-
erson shall be convicted without the
the Members of the Senate.

of impeachment shall not extend fur-
and disqualification to hold any office
ippines, but the party convicted shall
ject to prosecution, trial, and punish-

promulgate its rules on impeachment
pose of this section.

ci-graft court known as the Sandigan-
on and exercise its jurisdiction as now
y law.

created the independent Office of the
Ombudsman to be known as Tanod-
l at least one Deputy each for Luzon,

Visayas, and Mindanao. A separate Dep lishment may likewise be appointed.

Sec. 6. The officials and employee budsman, other than the Deputies, shall budsman according to the Civil Service La

Sec. 7. The existing Tanodbayan s the Office of the Special Prosecutor. It sha exercise its powers as now or hereafter except those conferred on the Office of under this Constitution.

Sec. 8. The Ombudsman and his born citizens of the Philippines, and at the at least forty years old, of recognized pro members of the Philippine Bar, and must any elective office in the immediately p budsman must have for ten years or more the practice of law in the Philippines.

During their tenure, they shall be s fications and prohibitions as provided for of this Constitution.

Sec. 9. The Ombudsman and his by the President from a list of at least si Judicial and Bar Council, and from a list vacancy thereafter. Such appointments tion. All vacancies shall be filled withi occur.

Sec. 10. The Ombudsman and h rank of Chairman and Members, respect Commissions, and they shall receive th not be decreased during their term of offi

Sec. 11. The Ombudsman and hi term of seven years without reappointme fied to run for any office in the election in cessation from office.

Sec. 12. The Ombudsman and hi the people, shall act promptly on comp manner against public officials or emplo any subdivision, agency or instrumenta ernment-owned or controlled corporation s of the action taken and the result

he Ombudsman shall have the follow-
ies:

vn, or on complaint by any person, any
: official, employee, office or agency,
ears to be illegal, unjust, improper, or

int or at its own instance, any public
ernment, or any subdivision, agency or
vell as of any government-owned or
ginal charter, to perform and expedite
w, or to stop, prevent, and correct any
formance of duties.

oncerned to take appropriate action
nployee at fault, and recommend his
n, fine, censure, or prosecution, and

ncerned, in any appropriate case, and
may be provided by law, to furnish it
ting to contracts or transactions en-
ng the disbursement or use of public
t any irregularity to the Commission
.

ment agency for assistance and infor-
harge of its responsibilities, and to
t records and documents.

vered by its investigation when cir-
h due prudence.

es of inefficiency, red tape, misman-
n in the Government and make rec-
ination and the observance of high
cy.

of procedure and exercise such other
ons or duties as may be provided by

the Ombudsman shall enjoy fiscal
al appropriations shall be automati-

Sec. 15. The right of the State to
fully acquired by public officials or emp
their nominees or transferees, shall not
laches, or estoppel.

Sec. 16. No loan, guaranty, or o
commodation for any business purpose r
indirectly, by any government-owned or c
institution to the President, the Vice-Pre
Cabinet, the Congress, the Supreme Cou
Commissions, the Ombudsman, or to a
they have controlling interest, during the

Sec. 17. A public officer or emplo
of office and as often thereafter as may b
declaration under oath of his assets, liabi
case of the President, the Vice-President
net, the Congress, the Supreme Court, t
sions and other constitutional offices,
forces with general or flag rank, the decl
the public in the manner provided by law

Sec. 18. Public officers, and em
this Constitution allegiance at all times
employee who seeks to change his citize
of an immigrant of another country duri
with by law.

ARTICLE XI

NATIONAL ECONOMY AN

Section 1. The goals of the natio
uitable distribution of opportunities, i
tained increase in the amount of goods a
nation for the benefit of the people; and
as the key to raising the quality of life f
privileged.

The State shall promote industriali
based on sound agricultural developm
through industries that make full and
natural, resources, and which are comp
foreign markets. However, the State s
prises against unfair foreign competition

als, all sectors of the economy and all
e given optimum opportunity to de-
uding corporations, cooperatives, and
s, shall be encouraged to broaden the

public domain, waters, minerals, coal,
oils, all forces of potential energy,
dlife, flora and fauna, and other natu-
State. With the exception of agricul-
resources shall not be alienated. The
utilization of natural resources shall
upervision of the State. The State may
ies, or it may enter into co-production,
haring agreements with Filipino citi-
iations at least sixty *per centum* of
citizens. Such agreements may be for
y-five years, renewable for not more
der such terms and conditions as may
of water rights for irrigation, water
uses other than the development of
ay be the measure and limit of the

e nation's marine wealth in its archi-
, and exclusive economic zone, and
xclusively to Filipino citizens.

law, allow small-scale utilization of
citizens, as well as cooperative fish
stence fishermen and fish-workers in
.

into agreements with foreign-owned
technical or financial assistance for
pment, and utilization of minerals,
oils according to the general terms
v, based on real contributions to the
welfare of the country. In such agree-
te the development and use of local
es.

fy the Congress of every contract en-
his provision, within thirty days from

Sec. 3. Lands of the public domai
tural, forest or timber, mineral lands, a
tural lands of the public domain may b
according to the uses to which they may
of the public domain shall be limited to
corporations or associations may not hold
public domain except by lease, for a perio
years, renewable for not more than tw
exceed one thousand hectares in area.
may lease not more than five hundred h
than twelve hectares thereof by purchase

Taking into account the requireme
and development, and subject to the re
form, the Congress shall determine, by
public domain which may be acquired, de
the conditions therefor.

Sec. 4. The Congress shall, as so
law the specific limits of forest lands a
clearly their boundaries on the ground.
and national parks shall be conserved a
diminished, except by law. The Congr
period as it may determine, measures t
gered forests and watershed areas.

Sec. 5. The State, subject to the
tion and national development policies
the rights of indigenous cultural com
lands to ensure their economic, social, a

The Congress may provide for th
laws governing property rights or relati
ership and extent of ancestral domain.

Sec. 6. The use of property bea
economic agents shall contribute to th
and private groups, including corporatio
collective organizations, shall have the
operate economic enterprises, subject
promote distributive justice and to inte
so demands.

Sec. 7. Save in cases of hered
lands shall be transferred or conveyed
rations, or associations qualified to a
public domain.

g the provisions of Section 7 of this
ı of the Philippines who has lost his
a transferee of private lands, subject

may establish an independent eco-
eaded by the President, which shall,
appropriate public agencies, various
rnment units, recommend to Congress,
grated and coordinated programs and
nt.

des otherwise, the National Economic
all function as the independent plan-
.

shall, upon recommendation of the
, when the national interest dictates,
ippines or to corporations or associa-
n of whose capital is owned by such
ıtage as Congress may prescribe, cer-
Congress shall enact measures that
and operation of enterprises whose
inos.

ivileges, and concessions covering the
ny, the State shall give preference to

and exercise authority over foreign
l jurisdiction and in accordance with
.

certificate, or any other form of au-
of a public utility shall be granted
ines or to corporations or associations
Philippines at least sixty *per centum*
ıch citizens, nor shall such franchise,
exclusive in character or for a longer
shall any such franchise or right be
ndition that it shall be subject to
al by the Congress when the common
all encourage equity participation in
public. The participation of foreign
of any public utility enterprise shall
ate share in its capital, and all the

executive and managing officers of such
must be citizens of the Philippines.

Sec. 12. The State shall promote
pino labor, domestic materials and locally
measures that help make them competiti

Sec. 13. The State shall pursue a
general welfare and utilizes all forms and
on the basis of equally and reciprocity.

Sec. 14. The sustained developme
talents consisting of Filipino scientists, e
managers, high-level technical manpowe
craftsmen in all fields shall be promote
shall encourage appropriate technology a
the national benefit.

The practice of all professions in t
ited to Filipino citizens, save in cases pre

Sec. 15. The Congress shall creat
viability and growth of cooperatives as in
and economic development.

Sec. 16. The Congress shall not,
vide for the formation, organization, or re
tions. Government-owned or controlled c
or established by special charters in the i
and subject to the test of economic viabili

Sec. 17. In times of national eme
terest so requires, the State may, durin
reasonable terms prescribed by it, tem
the operation of any privately owned p
fected with public interest.

Sec. 18. The State may, in the in
defense, establish and operate vital indu
just compensation, transfer to public o
private enterprises to be operated by the

Sec. 19. The State shall regula
when the public interest so requires. No
trade or unfair competition shall be allo

Sec. 20. The Congress shall estab
monetary authority, the members of wh
natural-born Filipino citizens, of known
otism, the majority of whom shall come f

other qualifications and disabilities as
e authority shall provide policy direc-
nking, and credit. It shall have super-
f banks and exercise such regulatory
by law over the operations of finance
ons performing similar functions.

rwise provides, the Central Bank of the
existing laws, shall function as the

may only be incurred in accordance
of the monetary authority. Information
uaranteed by the Government shall be

rcumvent or negate any of the provi-
e considered inimical to the national
al and civil sanctions, as may be pro-

TICLE XIII

E AND HUMAN RIGHTS

ss shall give highest priority to the en-
otect and enhance the right of all the
uce social, economic, and political ine-
ral inequities by equitably diffusing
the common good.

shall regulate the acquisition, owner-
roperty and its increments.

of social justice shall include the
nic opportunities based on freedom of

LABOR

l afford full protection to labor, local
unorganized, and promote full employ-
ent opportunities for all.

ghts of all workers to self-organization,
tiations, and peaceful concerted activi-
ike in accordance with law. They shall

be entitled to security of tenure, humane
living wage. They shall also participat
making processes affecting their rights a
vided by law.

The State shall promote the princi
between workers and employers and the
tary modes in settling disputes, includ
enforce their mutual compliance therewit

The State shall regulate the relat
employers, recognizing the right of lab
fruits of production and the right of en
turns on investments, and to expansion a

AGRARIAN AND NATURAL RES

Sec. 4. The State shall, by law,
form program founded on the right of
workers, who are landless, to own direc
they till or, in the case of other farmwor
of the fruits thereof. To this end, the
undertake the just distribution of all ag
such priorities and reasonable retention
prescribe, taking into account ecologica
considerations, and subject to the payme
determining retention limits, the State
small landowners. The State shall fur
voluntary land-sharing.

Sec. 5. The state shall recognize
workers, and landowners, as well as co
pendent farmers' organizations to parti
ganization, and management of the p
support to agriculture through appropria
and adequate financial, production, ma
services.

Sec. 6. The State shall apply th
form or stewardship, whenever applicab
the disposition or utilization of other r
lands of the public domain under leas
agriculture, subject to prior rights, hon
tlers, and the rights of indigenous com
lands.

landless farmers and farmworkers in
iich shall be distributed to them in the

protect the rights of subsistence fish-
munities, to the preferential use of the
resources, both inland and offshore. It
fishermen through appropriate tech-
e financial, production, and marketing
. The State shall also protect, develop,
The protection shall extend to offshore
e fishermen against foreign intrusion.
st share from their labor in the utiliza-
urces.

l provide incentives to landowners to
rarian reform program to promote in-
creation, and privatization of public
nstruments used as payment for their
ty in enterprises of their choice.

EFORM AND HOUSING

l, by law, and for the common good,
ith the private sector, a continuing
n and housing which will make avail-
housing and basic services to under-
ens in urban centers and resettlement
dequate employment opportunities to
tation of such program the State shall
perty owners.

l poor dwellers shall not be evicted nor
xcept in accordance with law and in a

an or rural dwellers shall be under-
ltation with them and the communi-
ated.

HEALTH

ll adopt an integrated and comprehen-
opment which shall endeavor to make
her social services available to all the
re shall be priority for the needs of the

underprivileged sick, elderly, disabled,
State shall endeavor to provide free medi

Sec. 12. The State shall establish
food and drug regulatory system and un
manpower development and research,
health needs and problems.

Sec. 13. The State shall establis
abled persons for their rehabilitation,
reliance, and their integration into the m

WOMEN

Sec. 14. The State shall protect w
safe and healthful working conditions,
maternal functions, and such facilities
enhance their welfare and enable them t
in the service of the nation.

ROLE AND RIGHTS OF PEOPLE

Sec. 15. The State shall respect
ple's organizations to enable the peo
within the democratic framework, thei
interests and aspirations through peacef

People's organizations are *bona*
with demonstrated capacity to promote
identifiable leadership, membership, and

Sec. 16. The right of the people a
fective and reasonable participation at
and economic decision-making shall n
shall, by law, facilitate the establishme
mechanisms.

HUMAN RIGH

Sec. 17. (1) There is hereby cre
called the Commission on Human Rights

(2) The Commission shall be co
four Members who must be natural-bor
and a majority of whom shall be memb
office and other qualifications and disab
Commission shall be provided by law.

ion is constituted, the existing Presi-
Rights shall continue to exercise its

al appropriations of the Commission
larly released.

on on Human Rights shall have the
:

wn or on complaint by any party, all
s involving civil and political rights;

al guidelines and rules of procedure,
tions thereof in accordance with the

legal measures for the protection of
thin the Philippines, as well as Filipi-
de for preventive measures and legal
eged whose human rights have been

powers over jails, prisons, or deten-

ing program of research, education,
pect for the primacy of human rights;

Congress effective measures to pro-
vide for compensation to victims of
heir families;

ne Government's compliance with in-
n human rights;

m prosecution to any person whose
n of documents or other evidence is
ermine the truth in any investigation
hority;

ce of any department, bureau, office,
its functions;

and employees in accordance with

duties and functions as may be pro-

may provide for other cases of viola-
ould fall within the authority of the
t its recommendations.

ARTICLE XIV

EDUCATION, SCIENCE AND TE
CULTURE, AND SP

EDUCATION

Section 1. The State shall protec
all citizens to quality education at all lev
ate steps to make such education accessib

Sec. 2. The State shall:

(1) Establish, maintain, and sup
and integrated system of education rel
people and society;

(2) Establish and maintain a syst
in the elementary and high school levels.
ral right of parents to rear their childre
compulsory for all children of school age;

(3) Establish and maintain a sys
student loan programs, subsidies, and o
be available to deserving students in bot
especially to the underprivileged;

(4) Encourage non-formal, inform
systems, as well as self-learning, inde
study programs particularly those that r
and

(5) Provide adult citizens, the
youth with training in civics, vocational

Sec. 3. (1) All educational ins
study of the Constitution as part of the c

(2) They shall inculcate patrioti
love of humanity, respect for human rig
of national heroes in the historical devel
the rights and duties of citizenship, stre
values, develop moral character and pe
critical and creative thinking, broaden
knowledge, and promote the vocational e

(3) At the option expressed in
guardians, religion shall be allowed to b
wards in public elementary and high sch

ted or approved by the religious au-
ch the children or wards belong, with-
rnment.

recognizes the complementary roles of
s in the educational system and shall
on and regulation of all educational

:ions, other than those established by
boards, shall be owned solely by citi-
orations or associations at least sixty
vhich is owned by such citizens. The
re increased Filipino equity participa-
ons.

istration of educational institutions
e Philippines.

n shall be established exclusively for
shall comprise more than one-third of
The provisions of this subsection shall
d for foreign diplomatic personnel and
otherwise provided by law, for other

ssets of non-stock, non-profit educa-
y, directly, and exclusively for educa-
npt from taxes and duties. Upon the
corporate existence of such institu-
sposed of in the manner provided by

institutions, including those coopera-
entitled to such exemptions subject to
v including restrictions on dividends
t.

s prescribed by law, all grants, en-
ibutions used actually, directly, and
oses shall be exempt from tax.

shall take into account regional and
nd shall encourage local planning in
policies and programs.

hall be enjoyed in all institutions of

(3) Every citizen has a right to sel
study, subject to fair, reasonable, and eq
demic requirements.

(4) The State shall enhance the
sional advancement. Non-teaching ac
personnel shall enjoy the protection of th

(5) The State shall assign the hi
education and ensure that teaching will
ful share of the best available talents tl
tion and other means of job satisfaction a

LANGUAGE

Sec. 6. The national language of
As it evolves, it shall be further develope
of existing Philippine and other languag

Subject to provisions of law and
appropriate, the Government shall take
the use of Filipino as a medium of off
language of instruction in the educationa

Sec. 7. For purposes of commun
official languages of the Philippines are
provided by law, English.

The regional languages are the au
the regions and shall serve as auxiliary

Spanish and Arabic shall be prom
tional basis.

Sec. 8. This Constitution shall
and English and shall be translated in
Arabic, and Spanish.

Sec. 9. The Congress shall est
commission composed of representati
disciplines which shall undertake, co
searches for the development, propa
Filipino and other languages.

SCIENCE AND TEC

Sec. 10. Science and technolog
development and progress. The State s
and development, invention, innovation

ion, training, and services. It shall
e, and self-reliant scientific and tech-
r application to the country's produc-

nay provide for incentives, including
private participation in programs of
earch. Scholarships, grants-in-aid, or
ll be provided to deserving science
ts, inventors, technologists, and spe-

l regulate the transfer and promote
om all sources for the national bene-
dest participation of private groups,
nity-based organizations in the gen-
e and technology.

ll protect and secure the exclusive
artists, and other gifted citizens to
l creations, particularly when benefi-
od as may be provided by law.

ND CULTURE

l foster the preservation, enrichment,
ilipino national culture based on the
in a climate of free artistic and intel-

rs shall enjoy the patronage of the
, promote, and popularize the nation's
ge and resources, as well as artistic

y's artistic and historic wealth consti-
f the nation and shall be under the
nay regulate its disposition.

ll recognize, respect, and protect the
communities to preserve and develop
l institutions. It shall consider these
tional plans and policies.

shall ensure equal access to cultural
ducational system, public or private
s, grants and other incentives, and

(2) The State shall encourage
studies on the arts and culture.

SPORTS

Sec. 19. (1) The State shall pro
encourage sports programs, league
sports, including training for internati
self-discipline, teamwork, and excellen
healthy and alert citizenry.

(2) All educational institutions
sports activities throughout the countr
clubs and other sectors.

ARTICLE X

THE FAMIL

Section 1. The State recognizes
foundation of the nation. Accordingly, it
ity and actively promote its total develo

Sec. 2. Marriage, as an inviola
foundation of the family and shall be pr

Sec. 3. The State shall defend:

(1) The right of spouses to found
their religious convictions and the de
hood;

(2) The right of children to assis
and nutrition, and special protection
abuse, cruelty, exploitation, and other c
development;

(3) The right of the family to a
come; and

(4) The right of families or famil
in the planning and implementation of
affect them.

Sec. 4. The family has the duty
bers but the State may also do so thr
security.

ICLE XVI

L PROVISIONS

ne Philippines shall be red, white, and
rs, as consecrated and honored by the

ay, by law, adopt a new name for the
r a national seal, which shall all be
f the ideals, history, and traditions of
e effect only upon its ratification by
dum.

ot be sued without its consent.

ces of the Philippines shall be com-
which shall undergo military training
by law. It shall keep a regular force
State.

rs of the armed forces shall take an
nd defend this Constitution.

gthen the patriotic spirit and nation-
ary, and respect for people's rights in

he armed forces and adequate remu-
mbers shall be a prime concern of the
e insulated from partisan politics.

ry shall engage directly or indirectly
y, except to vote.

med forces in the active service shall,
signated in any capacity to a civilian
ncluding government-owned or con-
eir subsidiaries.

of military officers shall not allow ex-

n of the regular force of the armed
tionately from all provinces and cities

he Chief of Staff of the armed forces
However, in times of war or other
y the Congress, the President may

Sec. 6. The State shall establish
force, which shall be national in scope a
be administered and controlled by a natio
authority of local executives over the po
tion shall be provided by law.

Sec. 7. The State shall provide im
benefits, and other forms of assistance to w
military campaigns, their surviving spouse
be provided therefor and due consideratio
disposition of agricultural lands of the pub
ate cases, in the utilization of natural reso

Sec. 8. The State shall, from time
the pensions and other benefits due to r
ment and the private sectors.

Sec. 9. The State shall protect c
practices and from substandard or hazard

Sec. 10. The State shall provide
the full development of Filipino capabi
communication structures suitable to th
the nation and the balanced flow of inf
across the country, in accordance with
freedom of speech and of the press.

Sec. 11. (1) The ownership and
shall be limited to citizens of the Phili
cooperatives or associations, wholly-ow
citizens.

The Congress shall regulate or pr
mercial mass media when the public inte
nations in restraint of trade or unfair c
allowed.

(2) The advertising industry is in
est, and shall be regulated by law for t
and the promotion of the general welfare.

Only Filipino citizens or corporati
seventy *per centum* of the capital of whic
shall be allowed to engage in the advertis

The participation of foreign investo
entities in such industry shall be limi
share in the capital thereof, and all th
officers of such entities must be citizens o

may create a consultative body to ad-
affecting indigenous cultural commu-
embers of which shall come from such

TICLE XVII

NTS OR REVISIONS

ment to, or revision of, this Constitu-

a vote of three-fourths of all its Mem-

vention.

o this Constitution may likewise be di-
through initiative upon a petition of at
e total number of registered voters, of
t must be represented by at least three
votes therein. No amendment under
d within five years following the ratifi-
or oftener than once every five years

ide for the implementation of the exer-

may, by a vote of two-thirds of all its
l convention, or by a majority vote of
electorate the question of calling such

nt to, or revision of, this Constitution
be valid when ratified by a majority of
which shall be held not earlier than
nety days after the approval of such

ection 2 hereof shall be valid when rati-
ast in a plebiscite which shall be held not
r than ninety days after the certification
of the sufficiency of the petition.

ARTICLE XV

TRANSITORY PRO

Section 1. The first elections o
under this Constitution shall be held o
1987.

The first local elections shall be he
by the President, which may be simulta
Members of the Congress. It shall includ
of the city or municipal councils in the M

Sec. 2. The Senators, Members
tives, and the local officials first elected
serve until noon of June 30, 1992.

Of the Senators elected in the elec
obtaining the highest number of votes sh
remaining twelve for three years.

Sec. 3. All existing laws, decrees
tions, letters of instructions, and other e
sistent with this Constitution shall rem
repealed, or revoked.

Sec. 4. All existing treaties or int
have not been ratified shall not be rene
concurrence of at least two-thirds of all th

Sec. 5. The six-year term of the i
President elected in the February 7, 19
synchronization of elections, hereby exte

The first regular elections for the
under this Constitution shall be held o
1992.

Sec. 6. The incumbent President
islative powers until the first Congress is

Sec. 7. Until a law is passed, t
pointment from a list of nominees by th
reserved for sectoral representation in
Article VI of this Constitution.

Sec. 8. Until otherwise provided
dent may constitute the Metropolitan Au
heads of all local government units com
nila area.

shall continue to exist and operate until
province or until its component munici-
her province.

sting at the time of the ratification of
ue to exercise their jurisdiction until
he provisions of the existing Rules of
cedural laws not inconsistent with this
rative unless amended or repealed by
gress.

t Members of the Judiciary shall con-
h the age of seventy years or become
duties of their office or are removed for

Court shall, within one year after the
n, adopt a systematic plan to expedite
ses or matters pending in the Supreme
to the effectivity of this Constitution. A
for all special courts and quasi-judicial

t of the lapse, before the ratification of
able period for the decision or resolution
ted for adjudication by the courts, shall
Court as soon as practicable.

of paragraphs (3) and (4), Section 15 of
on shall apply to cases or matters filed
Constitution, when the applicable period

t Members of the Civil Service Commis-
ons, and the Commission on Audit shall
after the ratification of this Constitu-
moved for cause or become incapacitated
office or appointed to a new term there-
Member serve longer than seven years
tification of this Constitution.

rvice employees separated from the ser-
esult of the reorganization pursuant to
arch 25, 1986 and the reorganization
is Constitution shall be entitled to ap-
o retirement and other benefits accruing
neral application in force at the time of

may be considered for employment in the
subdivisions, instrumentalities, or agenc
owned or controlled corporations and their
also applies to career officers whose resign
the existing policy, had been accepted.

Sec. 17. Until the Congress provid
shall receive an annual salary of three h
Vice-President, the President of the Senat
of Representatives, and the Chief Justice
hundred forty thousand pesos each; the S
House of Representatives, the Associate
Court, and the Chairmen of the Consti
hundred four thousand pesos each; and th
tional Commissions, one hundred eighty th

Sec. 18. At the earliest possible t
increase the salary scales of the other of
National Government.

Sec. 19. All properties, records, e
ties, and other assets of any office or bo
under Proclamation No. 3 dated March 2
shall be transferred to the office or body to
and responsibilities substantially pertain.

Sec. 20. The first congress shall g
tion of the period for the full implementa
education.

Sec. 21. The Congress shall provi
adequate remedies for the reversion to t
public domain and real rights connecte
quired in violation of the Constitution
through corrupt practices. No transfer or
real rights shall be allowed until after th
ratification of this Constitution.

Sec. 22. At the earliest possible
expropriate idle or abandoned agricultura
law, for distribution to the beneficiaries
gram.

Sec. 23. Advertising entities affec
11 of Article XVI of this Constitution s
ratification to comply on a graduated and
minimum Filipino ownership requiremen

; and other armed groups not recognized
shall be dismantled. All paramilitary
Defense Forces not consistent with the
l in this Constitution, shall be dissolved
ed into the regular force.

iration in 1991 of the Agreement be-
ippines and the United States of Amer-
foreign military bases, troops, or facili-
Philippines except under a treaty duly
d, when the Congress so requires, rati-
cast by the people in a national referen-
nd recognized as a treaty by the other

to issue sequestration or freeze orders
ted March 25, 1986 in relation to the
hall remain operative for not more than
ication of this Constitution. However, in
ied by the President, the Congress may

order shall be issued only upon show-
order and the list of the sequestered or
th be registered with the proper court.
tification of this Constitution, the corre-
ceeding shall be filed within six months
issued after such ratification, the judi-
be commenced within six months from

ze order is deemed automatically lifted
ng is commenced as herein provided.

ion shall take effect immediately upon
f the votes cast in a plebiscite held for
e all previous Constitutions.

onstitution of the Republic of the Phil-
Constitutional Commission of 1986 on
lineteen hundred and eighty-six, and
enth day of October Nineteen hundred
Hall, National Government Center,
oners whose signatures are hereunder

Cecilia Muñoz Pal
President

Ambrosio B. Padi
Vice-President

Napoleon G. Ran
Floor Leader

Ahmad Domocao Alonto
Assistant Floor Leader

Yusuf R. Abubakar
Adolfo S. Azcuna
Jose F.S. Bengzon, Jr.
Joaquin G. Bernas
Crispino M. de Castro
Roberto R Concepcion
Vicente B. Foz
Jose Luis Martin C. Gascon
Alberto M.K. Jamir
Eulogio R. Lerum
Christian S. Monsod
Ma. Teresa F. Nieva
Blas F. Ople
Florenz D. Regalado
Cirilo A. Rigos
Ricardo J. Romulo
Rene V. Sarmiento
Lorenzo M. Sumulong
Christine O. Tan
Efrain B. Treñas
Wilfrido V. Villacorta

J
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M
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C
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Attested by:

Flerida Ruth P. Ro
Secretary-Gene

DINANCE

S OF THE HOUSE OF REPRESEN-
SS OF THE PHILIPPINES TO THE
DISTRICTS IN PROVINCES AND
LITAN MANILA AREA

es of the election of Members of the
the First Congress of the Philippines
sed by the 1986 Constitutional Com-
ions, and until otherwise provided by
ll be elected from legislative districts
ices, cities, and the Metropolitan Ma-

TAN MANILA AREA

rict: Barangays Nos. 1-146, N—City
ila and Caloocan; E—From Estero de
n to Estero de Vitas up to the bridge
eet, eastward to Tayuman Street up to
g Dagupan Street, thence southward to
SE—From point Claro M. Recto Avenue
Ianila Bay; W—Manila Bay northward
n Manila and Caloocan, *Second District:*
, N—City boundary between Manila
end of Rizal Avenue Extension extend-
d Tracks at Antipolo Street; from cor-
Rizal Avenue on southern side of Rail-
westward to Estero de San Lazaro,
de San Lazaro to corner of C.M. Recto
-Claro M. Recto Avenue westward to
M. Recto at Estero de la Reina; W—
tero de Vitas to Estero de Sunog Apog
n Manila and Caloocan; *Third District:*
, N—City boundary between Manila
nifacio Street extending southward to
a, Claro M. Recto Avenue eastward to
ding at Pasig River; S—Mouth of Es-
Pasig River, westward to Del Pan
an Street; W—Del Pan Street north-
to Extension to Estero de San Lazaro,

sion, northward to boundary between Manila and Caloocan; *Fourth District:* Barangays Nos. 395-586 SW—Estero de San Miguel up to Mendiola Bridge, thence to C.M. Recto Avenue to Quezon Boulevard; W—Quezon Boulevard, Andalucia, Dimasalang up to boundary between Manila and Quezon City; NE—City boundary between Manila and Quezon City up to Ramon Magsaysay Boulevard; SE—Ramon Magsaysay Boulevard up to V. Mapa Street; S—Ramon Magsaysay Boulevard up to point Estero de San Miguel where Ramon Magsaysay Boulevard spans Estero de San Miguel; *Fifth District:* Barangays Nos. 649-828 N—Mouth of Pasig River inland to point Paz M. Guanzon Street extending to Estero de Pandacan; NE—Estero de Pandacan up to Pedro Gil Street to Tejeron Street up to boundary of Manila and Makati; SE—City boundary between Manila and Makati up to Estero de Tripa de Gallina; S—City boundary between Pasay and Manila down to Roxas Boulevard up to edge of reclaimed areas westward to Manila Bay; W—Manila Bay up to mouth of Pasig River; *Sixth District:* Barangays Nos. 587-648; and 829-905 N—Starting from point which is mouth of Estero de San Miguel going eastward to Mendiola Bridge, following line along Estero de San Miguel up to point where Ramon Magsaysay Boulevard spans Estero de San Miguel, thence Ramon Magsaysay Boulevard eastward to City boundary between Manila and Quezon City; NE—City boundary up to point city boundary of Manila, San Juan and Quezon City; E—Manila—San Juan—Mandaluyong—Makati boundaries up to Tejeron Street; SE—Tejeron Street to Pedro Gil Street up to bridge spanning Estero de Pandacan, SW & W—Estero de Pandacan going northward to Paz M. Guanzon Street, then northward on Paz M. Guazon Street up to Pasig River to mouth of Estero de San Miguel on Pasig River.

QUEZON CITY, four (4)—*First District:* Barangays Del Monte, Paltok, Bungad, San Antonio, Katipunan, Veterans Village, Talayan, Damayan, Mariblo, Paraiso, Sta. Cruz, Nayong Kanluran, Philam, West Triangle, N.S. Amoranto, Paang Bundok, San Isidro Labrador, Sta. Teresita,.Salvacion, Maharlika, St. Peter, Lourdes, Sto. Domingo, Sienna, San Jose, Manresa, Pag-ibig sa Nayon, Balingasa, Masambong, Damar, Bahay Toro, Sto. Cristo, Ramon Magsaysay, Project 6, Vasra, Alicia, and Bagong Pag-asa; *Second District:* Barangays Fairview, New Era, Holy Spirit, Batasan Hills, Commonwealth, Payatas, Bagong Silangan, Sauyo, Talipapa, Bagbag, San Bartolome, Sta. Lucia, Gulod, Novaliches

agkaisang Nayon, Sta. Monica, Kali-
Apolonio Samson, Unang Sigaw, Tan-
Culiat, Baesa, Capri, Balumbato, and
ict: Barangays E. Rodriguez, Silangan,
an, Quirino 3-B, Amihan, Socorro, San
oquino, Tagumpay, Aguinaldo, White
Ridge A, Blue Ridge B, Bayanihan,
opa 3, Escopa 4, West Kamias, East
irino 2 B, Quirino 2 C, Ugong Norte,
Maria Clara, Masagana, Milagrosa,
oyola Heights, Pansol, and Matandang
arangays Bagong Lipunan, Kaunlaran,
Concepcion, South Triangle, Sacred
aligsahan, Obrero, Roxas, Kamuning,
langan, Tatalon, Don Manuel, Doña
Aurora, Santo Niño, Santol, Doña
alusugan, Damayang Lagi, Mariana,
gkaisahan, San Vicente, U.P. Campus,
ld Capital Site, U.P. Village, Teacher's
tuna, Malaya, Piñahan, and Botocan.

First District: 70 Barangays; All of
; *Second District:* 118 Barangays; All
A.

e (1)
NG, one (1)

PA, one (1)
)

GION I

aguio, two (2)—*First District:* Baguio
he Municipalities of Benguet.

ILOCOS NORTE with Laoag City, two (2
and the Municipalities of Bacarra,
Pasuquin, Piddig, Sarrat, Vintar,
neg; *Second District:* Municipalities
Dingras, Espiritu, Marcos, Nueva
las, and Solsona.

ILOCOS SUR, two (2)—*First District:*
Cabugao, Caoayan, Magsingal, Sa
Vicente, Santa Catalina, Santo Dom
ond District: Municipalities of Alil
don, Cervantes, Galimuyod, Grego
bukel, Narvacan, Quirino, Salcedo
Santa, Santa Cruz, Santa Lucia, S
Tagudin, Sigay, and Sugpon.

LA UNION, two (2)—*First District:*
Balaoan, Bangar, Luna, San Ferna
Santol, and *Sudipen; Second Distric*
ingay, Bagulin, Bauang, Burgo
Rosario, Santo Tomas, and Tubao.

MOUNTAIN PROVINCE, one (1)

PANGASINAN with the Cities of Dagup
First District: Municipalities of B
Dasol, Infanta, Mabini, Alaminos,
trict: Municipalities of Labrador,
Mangatarem, Binmaley, Urbizton
trict: San Carlos City, and the Mu
yambang, Calasiao, Mapandan, a
trict: Dagupan City and the Muni
Fabian, San Jacinto, and *Manaoa*
ties of Binalonan, Laoac, Urdanet
Bautista, Alcala, and Sto. Tomas;
of Rosales, Asingan, Balungao,
Quintin, Natividad, Tayug, San Ni

REGION I

BATANES, one (1)

CAGAYAN, three (3)—*First District:* Mu
laniugan, Lallo, Buguey, Sta. Tere
taran, Baggao, and Alcala; *Second*

Claveria, Pamplona, Abulug, Balles-
Sto. Niño, Rizal, Piat, and Calayan;
alities of Tuguegarao, Solana, Enrile,
ng, and Tuao.

ict: Municipalities of Sta. Maria, San
nas, Albano, Tumauini, Ilagan, Divili-
nan; *Second District:* Municipalities of
kas, Mallig, Quezon, Quirino, Burgos,
Soliven, and San Mariano; *Third Dis-*
eina Mercedes, Cauayan, Luna, Caba-
ngadanan, and San Guillermo; *Fourth*
Cordon, Santiago, Ramon, San Isidro,
tin, and Dinapigui.

GION III

rict: Municipalities of Dinalupihan,
Abucay, and Morong, *Second District:*
Orion, Limay, Bagac, Mariveles, and

ict: Municipalities of Hagonoy, Paom-
Pulilan, and Bulacan; *Second District*
Bustos, Plaridel, Guiguinto, Balagtas,
District: Municipalities of San Miguel,
l, Angat, Norzagaray, and Remedios,
Municipalities of San Jose del Monte,
auayan, and Obando.

of Cabanatuan, Palayan and San Jose,
Iunicipalities of Nampicuan, Cuyapo,
a, Licab, Sto. Domingo, Aliaga, and
San Jose City and the Municipalities
g, Caranglan, Pantabangan, Llanera,
Cabanatuan City; Palayan City, and
eneral Natividad, Bongabong, Laur,
Fourth District: Municipalities of San

Leonardo, General Tinio, Peñaranda
San Antonio, and Jaen.

PAMPANGA with Angeles City, four (4)–
and the Municipalities of Mabala
District: Municipalities of Lubao,
rac, Sta. Rita, and Sexmoan; *Thir*
San Fernando, Arayat, Mexico, Ba
District: Municipalities of Candaba
tol, Minalin, Sto. Tomas, San Luis,

TARLAC, three (3)—*First Disctrict:* Mun
Ignacia, Camiling, Moncada, Sa
Ramos, San Clemente, and Pura;
ties of Tarlac, Gerona, and Victoria
ties of Bamban, Capas, Concepcion

ZAMBALES with Olongapo City, two (2
City and the Municipalities of
Marcelino; *Second District:* Munic
gan, Candelaria, Iba, Masinloc,
Felipe, San Narciso, and Sta. Cruz.

REGION I

AURORA, one (1)

BATANGAS with the Cities of Batang
District: Municipalities of Nasugb
Tuy, Calaca, Lemery, and Taal; *Se*
and the Municipalities of Lobo, S
San Luis, and Tingloy; *Third Dist*
Malvar, Sto. Tomas, Tanauan, Ta
Nicolas, Sta. Teresita, Alitagtag,
hoy; *Fourth District:* Lipa City a
Juan, Taysan, Rosario, P. Garcia,

CAVITE with the Cities of Tagaytay,
three (3)—*First District:* Cavite C
Bacoor, Kawit, Noveleta, and Ro
Martires City and the Municipa
Carmona, Gen. Mariano Alvarez,
Third District: Tagaytay City a
fonso, Amadeo, General Aguin
Maragondon, Mendez-Nunez, Nai

, four (4)—*First District:* Municipali-
and Sta. Rosa; *Second District:* Mu-
yao, Calamba, and Los Baños; *Third*
and the Municipalities of Calauan,
lan, Liliw, and Victoria; *Fourth Dis-*
ta. Cruz, Pila, Lumban, Pagsanjan,
, Pakil, Pangil, Siniloan, Famy, Mabi-
a, Luisiana, and Majayjay.

(1)

(2)—*First District:* Municipalities of
Puerto Galera, San Teodoro, Victoria,
d District: Municipalities of Bansud,
loria, Mansalay, Pinamalayan, and

a City, two (2)—*First District:* Munici-
celi, Busuanga, Cagayancillo, Coron,
, Linapacan, Magsaysay, Roxas, San
yaan; *Second District:* Puerto Princesa
ities of Aborlan, Balabac, Batarasa,
ezon, and Marcos.

ur (4)—*First District:* Municipalities of
anta, Jumalig, Panukulan, Patnanun-
aloc, Mauban, Pagbilao, Lucban, and
Lucena City and the Municipalities of
Antonio, Sariaya, and Tiaong; *Third*
f Catanauan, Gen. Luna, Macalelon,
res, San Francisco, San Narciso, Bue-
gdangan, and Unisan; *Fourth District:*
, Guinayangan, Gumaca, Lopez, Tag-
del, Alabat, Perez, and Quezon.

: Municipalities of Antipolo, Taytay,
angonan; *Second District:* Municipali-
Mateo, Morong, Cardona, Teresa, Ba-
la-Jala.

REGION V

ALBAY with Legaspi City, three (3)—*F*
Bacacay, Malinao, Malilipot, Sant
Second District: Legaspi City and
Daraga, Manito, and Rapu-Rapu;
of Guinobatan, Jovellar, Libon, Li
langui.

CAMARINES NORTE, one (1)

CAMARINES SUR including the Cities
First District: Municipalities of D
cot, Libmanan, Cabusao, Pamplo
San Fernando; *Second District:* N
ties of Bonbon, Calabanga, Cama
garao, Milaor, Ocampo, and Pili;
of Caramoan, Garchitorena, Goa,
gay, San Jose, Tigaon, Tinambac,
Iriga City and the Municipalities
Bula, and Nabua.

CATANDUANES, one (1)

MASBATE, three (3)—*First District:* M
Claveria, Monreal, San Jacinto,
Second District: Municipalities
Aroroy, Baleno, Balud, and Man
palities of Uson, Dimasalang, Pa
puz, Esperanza, Placer, and Cawa

SORSOGON, two (2)—*First District:* Mu
Donsol, Castilla, Bacon, Casiguran
trict: Municipalities of Barcelona,
lusan, Irosin, Sta. Magdalena, Mat

REGION V

AKLAN, one (1)

ANTIQUE, one (1)

CAPIZ including Roxas City, two (2)—
the Municipalities of Panay,
Roxas, Maayon, and Panitan; *Sec*
Dumalag, Jamindan, Mambusao,
tero, Dao, Dumarao, and Ivisan.

t: Municipalities of Guimbal, Igbaras,
Tubungan, Miagao, and Oton; *Second*
of Jordan, Nueva Valencia, Bue-
, Sta. Barbara, New Lucena, Zarraga,
an Miguel; *Third District:* Municipali-
, Janiuay, Badiangan, Mina, Pototan,
d Bingawan; *Fourth District:* Munici-
que, Dueñas, Dingle, Barotac Nuevo,
Banate; *Fifth District:* Municipalities
fael, Ajuy, Lemery, Concepcion, Sara,
ancia, Balasan, and Carles.

the Cities of San Carlos, Cadiz, Bago,
(6)—*First District:* San Carlos City and
oso, Calatrava, Escalante, and S. Bene-
diz City and the Municipalities of Sa-
District: Silay City and the Municipali-
e B. Magalona, Talisay, and Murcia;
y and the Municipalities of Valladolid,
a, Pulupandan, and La Carlota; *Fifth*
f La Castellana, Moises Padilla, Isa-
naylan, and Hinigaran; *Sixth District:*
alan, Ilog, Cauayan, Candoni, Sipalay,

GION VII

, three (3)—*First District:* Tagbilaran
ties of Alburquerque, Antequera, Ba-
e, Catigbian, Corella, Cortes, Dauis,
, Sikatuna, and Tubigon; *Second Dis-*
arin, Inabanga, Sagbayan, Buenavista,
San Miguel, Trinidad, Talibon, Ubay,
and Pres. C.P. Garcia; *Third District:*
oboc, Bilar, Batuan, Carmen, Sevilla,
arcia-Hernandez, Jagna, Duero, Guin-
i, Alicia, Anda, Sierra Bullones, and Pi-

ao, Lapu-Lapu, Mandaue, and Toledo,
Iunicipalities of Talisay, Minglanilla,

Naga, San Fernando, Carcar, and
Municipalities of Argao, Dalaguete
tander, Samboan, Ginatilan, M
Moalboal, Alcantara, Ronda, and
Toledo City and the Municipaliti
namungajan, Balamban, Asturias
trict: Municipalities of Tabuelan, S
yan, Madridejos, Daanbantayan, M
Fifth District: Danao City and th
Sagod, Catmon, Carmen, Compos
Poro, Tudela, and Pilar; *Sixth Dis*
daue City and the Municipality of

CEBU CITY, two (2)—*First District:* Bara
Apas, Bacayan, Banilad, Binaliw, B
Camputhaw, Capitol Site, Carre
Ramos, Day-as, Ermita, Guba, Hi
gayan, Kasambagan, Lahug, Loreg
bolo, Malubog, Pahina Central, P
Bato, Sambag I, Sambag II, San A
Sta. Cruz, Sirao, T. Padilla, Talam
and Zapatera; *Second District:* B
Pardo, Basak San Nicolas, Bonbo
Bout-Taup, Calamba, Cogon Pard
Inayawan, Kalunasan, Kinasang-a
ing, Pahina San Nicolas, Pamutan,
Punta Princesa, Quiot, San Nico
Suba Pasil, Sudlon, Sapangdako,
Toong.

NEGROS ORIENTAL, with the Cities o
guete, three (3)—*First District:* Ca
palities of Vallehermoso, Guihulng
Tayasan, Ayungon, Bindoy, and
Bais City, Dumaguete City, and
nay, Tanjay, Pamplona, Amlan, S
District: Municipalities of Valenci
guita, Siaton, Sta. Catalina, Bayaw

SIQUIJOR, one (1)

GION VIII

ban and Ormoc, five (5)—*First District:*
inicipalities of Alangalang, Babatngon,
, Tanauan, and Tolosa; *Second District:*
o, Barauen, Capoocan, Carigara, Da-
a, La Paz, Mayorga, Mac-Arthur, Pas-
Tunga; *Third District:* Municipalities of
ayan, Caibiran, Calubian, Culaba, Ka-
Naval, San Isidro, Tabango, and Vil-
noc City and the Municipalities of Al-
Matagob, Merida, and Palompon; *Fifth*
f Abuyog, Bato, Baybay, Hilongos, Hin-
Kahaplag, and Matalom.

2)—*First District:* Municipalities of
, Catarman, Lavezares, Lope de Vera,
in Isidro, San Jose, San Vicente, Vic-
Second District: Municipalities of Sil-
e, Pambuyan, Las Navas, Catubig,
as, Gamay, and Lapinig.

two (2)—*First District:* Calbayog City
of Almagro, Gandara, Matuguinao,
Santa Margarita, Sto. Niño, Tagapul-
ond District: Municipalities of Basey,
ram, Hinabangan, San Jose de Buan,
ong, Pinabacdao, San Sebastian, Sta.
Wright, and Zumarraga.

GION IX

t: Municipalities of Jolo, Marungas,
arang, Talipao, Maimbung, and Pati-
nicipalities of Siasi, Pandami, Pata,
nao, New Panamao, Tapul, Lugus, and

ZAMBOANGA DEL NORTE with the Cit
three (3)—*First District:* Dapitan C
of Sibutad, Rizal, La Libertad, Mu
Sr., and Polanco; *Second District:*
nicipalities of Katipunan, Pres. M
Ponot, Siayan, and Sindangan; *Th*
of Salug; Godod, Liloy, Tampilisan
Baliguian, Siraway, Bacungan, and

ZAMBOANGA DEL SUR, with Pagadiar
trict: Pagadian City and the Munici
yag, Molave, Tambulig, Midsalip,
Aurora, Tukuran, Josefina, and D
District: Municipalities of Duma
Dimataling, Dinas, San Miguel, M
malarang, Bayog, Lakewood, Pitog
Third District: Municipalities of M
Mabuhay, Siay, Kabasalan, Nag
Buug, Imelda, Payao, Talusan, Dip

ZAMBOANGA CITY, one (1)

REGION X

AGUSAN DEL NORTE, with the City of
trict: Butuan City and the Munici
District: Municipalities of Buenav
Jabonga, Kitcharao, Magallanes, N
Remedios T. Romualdez.

AGUSAN DEL SUR, one (1)

BUKIDNON, three (3)—*First District:*
Baungon, Malitbog, Libona, Manol
tocan, and Kalilangan; *Second Di*
laybalay, Lantapan, Cabanglasan
and Impasugong; *Third District:*
Quezon, Don Carlos, Kitaotao, Da
and Kadingilan.

CAMIGUIN, one (1)

MISAMIS OCCIDENTAL with the Citie
Tangub, two (2)—*First District:* C
nicipalities of Baliangao, Plaridel
Lopez Jaena, Aloran, Concepcion,

y, Tangub City, and the Municipalities
larin, Sinacaban, and Don Mariano

Gingoog City, two (2)—*First District:*
unicipalities of Magsaysay, Talisayan,
gitan, Sugbongcogon, Binuangan, Salay,
isag; *Second District:* Municipalities of
ueva, Tagoloan, Alubijid, El Salvador,
ndingan, Libertad, Lugait, Manticao,

(1)

the City of Surigao, two (2)—*First*
of Sta. Monica, San Isidro, Del Car-
a, Dapa, Socorro, Burgos, San Benito,
agdianao, Tubajon, and Basilisa; *Sec-*
y and the Municipalities of San Fran-
Placer, Malimono, Bacuag, Gigaquit,
nd Claver.

EGION XI

(3)—*First District:* Municipalities of
ompostela, Nabunturan, New Bataan
no; *Second District:* Municipalities of
Asuncion, New Corella, Tagum, Maco,
Third District: Municipalities of Sto.
, Babak, Samal, and Kaputian.

–First *District:* Municipalities of Bos-
araga, Manay, and Tarragona; *Second*
of Mati, Banaybanay, Lupon, San
eroso.

First District: Municipalities of Mag-
Cruz, Matanao, Digos, Hagonoy, and
: Municipalities of Kiblawan, Sulop,
Malita, Jose Abad Santos, Don
i.

st Disctrict: Districts of Poblacion and
Districts of Buhangin, Bunawan, and
t: Districts of Toril, Tugbok, Calinan,

SOUTH COTABATO with General Sa
District: General Santos City, and
molok, Tampakan, and Tupi; *Secon*
Tantangan, Norala, Banga, Sto.
Tiboli, and Lake Sebu; *Third Distr*
Malapatan, Glan, Maasim, Kiamba

SURIGAO DEL SUR, two (2)—*First Di*
yabas, Cantilan, Carrascal, Cortes
guel, Tago, Tandag, Cagwait, Ma
men, and Lianga; *Second District*
Bislig, Hinatuan, Lingig, and Tagb

REGION XI

LANAO DEL NORTE with Iligan City, t
City, Linamon, Kauswagan, Bacolod
and Baroy; *Second District:* Baloi
Piagapo, Pantao-Ragat, Matungao,
Magsaysay, Salvador, Kapatagan
Lala.

LANAO DEL SUR with Marawi City, tw
City and the Municipalities of Ma
Tagoloan, Kapai, Ditsaan-Ramain,
Bumbaran, Maguing, Wao, Molund
Poona-Bayabao, Masiu and Tam
nicipalities of Balindong, Tugaya,
Madamba, Pualas, Ganassi, Pag
Malabang, Balabagan, Kapatagan
dayan, Lumbatan, Lumbayanagu
lanogas.

MAGUINDANAO with Cotabato City,
bato City and the Municipalities
Buldon, Barira, Dinaig, Kabuntala
District: Municipalities of Pagal
Barongis, Maganoy, Talayan, So
Paglas, and Ampatuan.

NORTH COTABATO, two (2)—*First Di*
men, Kabacan, Libungan, Mid
Aleosan, Banisilan, and Alamada;

ilala, Matalam, Antipas, Mlang, Pres.
gpet.

n on Elections is hereby empowered to
e reapportionment herein made.

hat may hereafter be created, or any
hereafter increase to more than two
be entitled in the immediately follow-
nber or such number of Members as it
s of the number of its inhabitants and
t forth in paragraph (3), Section 5 of
The number of Members apportioned
ch new province was created or where
so increased, is geographically located
sted by the Commission on Elections
ot be made within one hundred and
.

shall be appended to the Constitution
tional Commission, and shall be sub-
neously with such Constitution, and
ication by a majority of the votes cast

6

Muñoz Palma
'resident

Ruth P. Romero
tary General

of the Commission on Elections.

APPENDI

1973 CONSTITU

of the

Republic of the Ph

PREAMBL

WE, THE SOVEREIGN FILIPINO PEO
OF DIVINE PROVIDENCE, IN ORDE
ERNMENT THAT SHALL EMBODY OU
GENERAL WELFARE, CONSERVE A
MONY OF OUR NATION, AND SEC
OUR POSTERITY THE BLESSINGS O
REGIME OF JUSTICE, PEACE, LIBE
ORDAIN AND PROMULGATE THIS CO

Article I

THE NATIONAL TE

SECTION 1. The national terri
archipelago, with all the islands and
all other territories belonging to the Pl
legal title, including the territorial se
the seabed, the insular shelves, and th
which the Philippines has sovereignty
around, between, and connecting the
irrespective of their breadth and dimer
nal waters of the Philippines.

Article II

DECLARATION OF P
AND STATE PO

SECTION 1. The Philippines i
eignty resides in the people and all gov
from them.

the State is a prime duty of the Gov-
n the fulfillment of this duty all citi-
to render personal military or civil

s renounces war as an instrument of
ierally accepted principles of interna-
the land, and adheres to the policy of
om, cooperation, and amity with all

l strengthen the family as a basic so-
ght and duty of parents in the rearing
and the development of moral charac-
pport of the Government.

gnizes the vital role of the youth in
note their physical, intellectual, and

l promote social justice to ensure the
f all the people. Toward this end, the
ition, ownership, use, enjoyment, and
, and equitably diffuse property own-

ll establish, maintain, and ensure
e field of education, health, housing,
ial security to guarantee the enjoy-
standard of living.

rity is at all times supreme over the

l afford protection to labor, promote
in employment, ensure equal work
, race or creed, and regulate the rela-
nployers. The State shall assure the
zation, collective bargaining, security
ne conditions of work. The State may
ion.

ll guarantee and promote the auton-
especially the barrio, to ensure their
ant communities.

Article III

CITIZENSHI

SECTION 1. The following are c

(1) Those who are citizens of th the adoption of this Constitution.

(2) Those whose fathers or moth pines.

(3) Those who elect Philippine pro-visions of the Constitution of ninete

(4) Those who are naturalized in

SEC. 2. A female citizen of the alien shall retain her Philippine citize omission she is deemed, under the law zenship.

SEC. 3. Philippine citizenship r the manner provided by law.

SEC. 4. A natural-born citizen i Philippines from birth without having t or perfect his Philippine citizenship.

Article IV

BILL OF RIGI

SECTION 1. No person shall b property without due process of law, no the equal protection of the laws.

SEC. 2. Private property shall without just compensation.

SEC. 3. The right of the people houses, papers and effects against unr zures of whatever nature and for any p and no search warrant or warrant of a probable cause to be determined by the sible officer as may be authorized by l oath or affirmation of the complainant produce, and particularly describing th the persons or things to be seized.

cy of communication and correspon-
pt upon lawful order of the court, or
equire otherwise.

ed in violation of this or the preceding
r any purpose in any proceeding.

abode and of travel shall not be im-
er of the court, or when necessary in
, public safety, or public health.

e people to information on matters of
zed. Access to official records, and to
ing to official acts, transactions, or
citizen subject to such limitations as

rm associations or societies for pur-
not be abridged.

made respecting an establishment of
e exercise thereof. The free exercise
rofession and worship, without dis-
l forever be allowed. No religious test
e of civil or political rights.

be passed abridging the freedom of
right of the people peaceably to as-
ment for redress of grievances.

ng a title of royalty or nobility shall

ring the obligation of contracts shall

to law or bill of attainder shall be en-

all be imprisoned for debt or non-

y servitude in any form shall exist
crime whereof the party shall have

of the writ of habeas corpus shall not
f invasion, insurrection, rebellion, or
the public safety requires it.

SEC. 16. All persons shall have
tion of their cases before all judicial, q
tive bodies.

SEC. 17. No person shall be hel
fense without due process of law.

SEC. 18. All persons, except th
fenses when evidence of guilt is strong
bailable by sufficient sureties. Excessive

SEC. 19. In all criminal prosec
presumed innocent until the contrary i
right to be heard by himself and couns
ture and cause of the accusation aga
impartial, and public trial, to meet the
have compulsory process to secure the
the production of evidence in his beh
ment, trial may proceed notwithstandi
provided that he has been duly notifie
unjustified.

SEC. 20. No person shall be
against himself. Any person under inve
of an offense shall have the right to r
and to be informed of such right. No for
tion, or any other means which vitiate
against him. Any confession obtained
shall be inadmissible in evidence.

SEC. 21. Excessive fines shall
unusual punishment inflicted.

SEC. 22. No person shall be tv
ishment for the same offense. If an act
ordinance, conviction or acquittal unde
to another prosecution for the same act.

SEC. 23. Free access to the cou
person by reason of poverty.

Article V

DUTIES AND OBLIGATIO

SECTION 1. It shall be the dut
the Republic and to honor the Philipp
and contribute to its development and v

to cooperate with the duly constituted and preservation of a just and orderly

the individual imposed upon him the em responsibly and with due regard

duty of every citizen to engage in and his family a life worthy of human

obligation of every citizen qualified to e.

rticle VI

FFRAGE

shall be exercised by citizens of the qualified by law, who are eighteen shall have resided in the Philippines e place wherein they propose to vote ng the election. No literacy, property, nt shall be imposed on the exercise of ansa shall provide a system for the and sanctity of the vote.

ticle VII

AND VICE-PRESIDENT

dent shall be the head of state and of the Philippines.

a Vice-President who shall have the of office as the President and may be me manner as the President as pro- of this Constitution.

be appointed as a member of the and elected as Prime Minister.

l be elected with and in the same

SEC. 3. A vote for the Presiden
Vice-President running under the sam
unless otherwise provided by law.

SEC. 4. No person may be elec
natural-born citizen of the Philippines
read and write, at least forty years of
President, and a resident of the Philip
immediately preceding such election.

SEC. 5. The President shall be
people for a term of six years which sha
eth day of June following the day of t
noon of the same date six years there
successor shall begin.

The returns of every election for
the board of canvassers of each province
to the Speaker at the Batasang Pamba
thirty days after the day of the electio
Batasang Pambansa, open all the cert
then be counted.

The person having the highest n
claimed elected; but in case two or more
highest number of votes, one of them s
vote of a majority of all the Members o
session assembled.

SEC. 6. If, at the time fixed for t
President-elect shall have died, the V
come President. If a President shall not
time fixed for the beginning of his ter
have failed to qualify, then the Vice-Pre
until a President shall have qualified
shall by law provide for the case where
nor a Vice-President-elect shall have
qualified, or both shall have died at the
of their term, declaring who shall then
ner in which one who is to act shall b
shall act accordingly until a President
qualified.

SEC. 7. The President, on assum
lowing oath or affirmation:

ar (or affirm) that I will faithfully and
ny duties as President of the Philip-
end its Constitution, execute its laws,
and consecrate myself to the service of
God." (In case of affirmation, the last

sident shall have an official residence.
President shall receive a salary to be
be increased or decreased during their
receive during their tenure any other
nent or any other source. Unless the
vide otherwise, the President and the
n annual salary of one hundred thou-
d pesos, respectively.

the Vice-President shall not, during
ffice, except when otherwise provided
they practice any profession, partici-
he management of any business, or be
or indirectly in any contract with, or
ivilege granted by, the Government or
nstrumentality thereof, including any
ed corporation.

nanent disability, death, removal from
sident, the Vice-President shall become
xpired term. The Batasang Pambansa
ase of permanent disability, death, re-
tion of both the President and Vice-
cer shall then become President or the
selected. In case a vacancy in the Office
ne presidential election in 1987, the
nbansa shall act as President until a
nt or either of them shall have been
ed. Their term of office shall commence
ing their proclamation, and shall end at
ne of the sixth year thereafter.

ay not declare martial law or suspend
eas corpus without the prior consent of
Iembers of the Batasang Pambansa, or
cer of instruction while the lawmaking
rce. He shall be deemed automatically
Tempore shall act as Speaker. While

acting as President, the Speaker may r
be eligible for election in the immedi
President and Vice-President.

The Batasang Pambansa shall, at
the third day after the vacancy occurs, c
rules without need of a call and within s
for a special election to elect a Presider
held not earlier than forty-five days nor
time of such call. The bill calling such sp
certified under paragraph (2), Section 19
tion and shall become law upon its app
Batasang Pambansa. Appropriations fo
charged against any current appropriati
the requirements of paragraph (4), Sec
Constitution. The convening of the Ba
suspended nor the special election postp
be called if the vacancy occurs within se
the presidential election of 1987.

Appointments extended by the A
effective, unless revoked by the new
ninety days from his assumption of offic

The Batasang Pambansa shall b
death, permanent disability or resign
time the vacancy in the Office of the
quently thereafter, declaring who shall
President and the Vice-President shall
fied, subject to the same restrictions of
as the Speaker when acting as Presiden

SEC. 10. The President shall ha

SEC. 11. The President shall
armed forces of the Philippines and, wh
he may call out such armed forces to
violence, invasion, insurrection or re
insurrection or rebellion, or imminen
public safety requires it, he may suspe
habeas corpus, or place the Philippine
martial law.

SEC. 12. The President shall a
and offices, the officers of the armed f
the rank of brigadier general or commo
the Government whose appointments a

ıthorized by law to appoint. However,
by law vest in the Prime Minister,
s, heads of agencies, commissions, and
ferior officers.

ıt may, except in cases of impeach-
ıtations and pardons, remit fines and
currence of the Batasang Pambansa,

t may contract and guarantee foreign
f of the Republic of the Philippines
nay be provided by law.

t shall formulate the guidelines of na-

ıt shall address the Batasang Pam-
regular session. He may also appear

ıt shall be immune from suit during
t whatsoever shall lie for official acts
suant to his specific orders during his

provided shall apply to the incumbent
XVII of this Constitution.

ested in the President of the Philip-
ution and the laws of the land which
r conferred upon any official shall be
in the President unless the Batasang

ticle VIII

NG PAMBANSA

slative power shall be vested in a Ba-

Pambansa which shall be composed of
nless otherwise provided by law, shall
ed from the different provinces with
urbanized cities as may be declared by
tricts in Metropolitan Manila, those
arious sectors as may be provided by
President from Members of the Cabi-

net. Each district in Metropolitan Man
practicable, contiguous, compact and ad
representatives shall be apportioned b
with their component cities, highly ur
tricts of Metropolitan Manila in accorda
respective inhabitants and on the basis
ratio, but the provinces with their com
banized cities shall have at least one re
inces and cities shall have at least the
sentatives as under the 1935 Constituti

The manner of the election of the
scribed by law. The number of represen
manner of their election or selection sha

SEC. 3. (1) The Members of th
have a term of six years which shall
vided by law, at noon on the thirtieth
their election.

(2) In case the Batasang Pamb
elected Members shall serve the unexp
the time the President convokes the
later than thirty days immediately follo

SEC. 4. No person shall be a M
bansa as a provincial, city or district
natural-born citizen of the Philippines
tion, is at least twenty-five years of a
registered voter in the political subdi
elected, and a resident thereof for a
months immediately preceding the day

A sectoral representative shall be
to read and write, and shall have such
be provided by law.

SEC. 5. (1) The regular electio
tasang Pambansa shall be held on the
and every six years thereafter.

(2) In case a vacancy arises in th
een months or more before a regular
Elections shall call a special election
after the vacancy occurs to elect the M
term.

Pambansa shall convene once every
July for its regular session, unless a
ınd shall continue to be in session for
datermine. However, it may be called
?resident to consider such subjects or
.

sang Pambansa shall, by a majority
its Speaker from among the elected
presentatives thereof. It shall choose
em necessary.

Members of the Batasang Pambansa
business, but a smaller number may
nay compel the attendance of absent
d under such penalties, as the Bata-

ansa may determine the rules of its
ers for disorderly behavior, and with
f all its Members, suspend or expel a
uspension, this shall not exceed sixty

ansa shall keep a journal of its pro-
ne publish the same, excepting such
affect national security; and the yeas
ll, at the request of one-fifth of the
the Journal.

erwise provided by law, each Mem-
a shall receive an annual salary of
ker of the Batasang Pambansa shall
enty-five thousand pesos. No increase
after the expiration of the term of the
ansa approving such increase.

ks of accounts of the Batasang Pam-
lic in accordance with law, and such
Commission on Audit which shall
xpenditures for each Member.

e Batasang Pambansa shall, in all of-
re than six years imprisonment, be
is attendance at its sessions, and in
e same; but the Batasang Pambansa
involved to the custody of the law
its adjournment for a recess or for its

next session, otherwise such privilege sl do so. A Member shall not be questione other place for any speech or debate in mittee thereof.

SEC. 10. A Member of the Bat hold any other office or employment subdivision, agency or instrumentality ment-owned or controlled corporations, c of Prime Minister, Deputy Prime Minis or Deputy Minister. Neither shall he, d was elected, be appointed to any civil created or the emoluments thereof incre of the Batasang Pambansa.

SEC. 11. No Member of the Ba pear as counsel before any court wit before any court in any civil case wher subdivision, agency or instrumentality or in any criminal case wherein any off ernment is accused of an offense commi or before any administrative body. N indirectly, be interested financially in franchise or special privilege granted subdivision, agency or instrumentality ernment-owned or controlled corporatic He shall not accept employment to inte where he may be called upon to act on a

SEC. 12. (1) There shall be a month or as often as the Rules of th provide, which shall be included in it Prime Minister, the Deputy Minister quired to appear and answer questions bers of the Batasang Pambansa. Writte ted to the Speaker at least three days hour. Interpellation shall not be limited may cover matters related thereto. T subjects of the question hour. When requires and the President so states i shall be conducted in executive session.

(2) The Batasang Pambansa or conduct inquiries in aid of legislation

The rights of persons appearing in or
l be respected.

asang Pambansa may withdraw its
ter by a majority vote of all its Mem-
no confidence shall be calendared for
east one-fifth of the Members of the
n motion shall be debated and voted
ven days after its submission.

eceipt of the written advice of the ap-
nfidence, the President may submit a
to be elected by the Batasang Pam-

may advise the President in writing
bansa whenever the need arises for a
fundamental issues, but not on a mat-
l integrity. Whereupon, the President
Pambansa not earlier than seven nor
his receipt of the advice, and call for
him which shall not be earlier than
days from the date of such dissolution.
Batasang Pambansa shall take place
diately preceding a regular election of
within eighteen months immediately
uring the pendency of impeachment
dent, or when the powers of the Presi-
eaker. The Batasang Pambansa shall
nce every twelve months.

s otherwise provided in this Constitu-
and effective unless concurred in by a
the Batasang Pambansa.

bansa, by a vote of two-thirds of all its
power to declare the existence of a

var or other national emergency, the
aw authorize the President for a lim-
h restrictions as it may prescribe, to
d proper to carry out a declared na-
thdrawn by resolution of the Batasang
cease upon its next adjournment.

ne Minister shall submit to the Bata-

session, as the basis of the general ap
receipts based on existing and propos
expenditures. The form, content and
budget shall be prescribed by law.

(2) No provision or enactment s
eral appropriations bill unless it relate
lar appropriation therein. Any such pr
limited in its operation to the appropria

(3) The procedure in approving
sang Pambansa shall strictly follow
appropriations for other departments a

(4) A special appropriations bill
which it is intended, and shall be supp
able as certified to by the National Tr
corresponding revenue proposal include

(5) No law shall be passed auth
priations; however, the President, the
the Chief Justice of the Supreme Cour
tional Commissions may by law by aut
in the general appropriations law for
savings in other items of their respectiv

(6) If, by the end of any fiscal y
shall have failed to pass the general ap
ing fiscal year, the general appropria
fiscal year shall be deemed re-enacted
effect until the general appropriations
Pambansa.

SEC. 17. (1) The rule of taxat
uitable. The Batasang Pambansa shal
of taxation.

(2) The Batasang Pambansa ma
dent to fix within specified limits, an
and restrictions as it may impose, ta
quotas, tonnage and wharfage dues, an

(3) Charitable institutions, chur
appurtenant thereto, mosques, and n
lands, buildings and improvements act
used for religious or charitable purpos
tion.

y tax exemption shall be passed with-
ity of all the Members of the Batasang

ey shall be paid out of the Treasury
opriation made by law.

property shall ever be appropriated,
or indirectly, for the use, benefit or
lenomination, sectarian institution or
use, benefit or support of any priest,
eligious teacher or dignitary as such,
cher, minister or dignitary is assigned
penal institution, or government or-

ill shall embrace only one subject
e title thereof.

ne a law unless it has passed three
nd printed copies thereof in its final
o the Members three days before its
ne Minister certifies to the necessity of
neet a public calamity or emergency.
ll, no amendment thereto shall be al-
hall be taken immediately thereafter,
in the Journal.

ll passed by the Batasang Pambansa
, be presented to the President. If he
ign it; otherwise, he shall veto it and
tions to the Batasang Pambansa. The
the Batasang Pambansa and, if ap-
s members, shall become a law. The
ill passed by the Batasang Pambansa
date of receipt thereof; otherwise, it
l signed it.

have the power to veto any particular
ion, revenue or tariff bill, but the veto
ns to which he does not object.

Article IX

THE PRIME MINISTER AND TH

SECTION 1. There shall be a Cabinet
posed of Ministers with or without portfolio a
dent. At least a majority of the Members of
heads of ministries shall come from the prov
representatives of the Batasang Pambansa.

The Prime Minister shall be the head of
upon the nomination of the President from a
the Batasang Pambansa, be elected by a major
thereof.

SEC. 2. The Prime Minister and the
sponsible to the Batasang Pambansa for the p
approved by the President.

SEC. 3. The term of office of the Prim
mence from the date of his election by the Bat
shall end on the date that the nomination of hi
ted by the President to the Batasang Pambans
of the Cabinet may be removed at the discretio

SEC. 4. (1) The President may nomi
Members of the Batasang Pambansa a Deput
shall be elected by a majority of the Member
Prime Minister shall perform such functions
him by the Prime Minister.

(2) The President shall also appoint
who shall perform such functions as may be as
or by the respective heads of ministries.

SEC. 5. The Prime Minister, Deputy P
Members of the Cabinet, on assuming office, sh
oath or affirmation:

> I do solemnly swear (or affirm) tha
> conscientiously fulfill my duties as (na
> Philippines, preserve and defend its Co
> laws, do justice to every man and consec
> vice of the Nation. So help me God." (In c
> last sentence will be omitted.)

SEC. 6. The salaries and emoluments
Deputy Prime Minister and Members of the

eased or decreased during their tenure
ided by law, the Prime Minister shall
t of the President.

nister and the Members of the Cabinet
ions of Section 11, Article VIII hereof
sel before any court or administrative
, or practice any profession, and shall
isqualifications as may be provided by

nister, Deputy Prime Minister or any
resign for any cause without vacating
strict or sectoral representative in the
her government position.

inister shall have supervision of all

rticle X

JUDICIARY

cial power shall be vested in one Su-
erior courts as may be established by
a shall have the power to define, pre-
sdiction of the various courts, but may
t of its jurisdiction over cases enumer-

reme Court shall be composed of a
ssociate Justices. It may sit *en banc* or

the constitutionality of a treaty, execu-
be heard and decided by the Supreme
, executive agreement, or law may be
thout the concurrence of at least ten
ich under its rules are required to be
d with the concurrence of at least eight

division shall be decided with the con-
bers, but if such required number is not
ecided *en banc:* Provided, that no doc-
down by the Court in a decision ren-

dered en *banc* or in division may be m
the Court sitting *en banc.*

SEC. 3. (1) No person shall b
Supreme Court unless he is a natura
pines, at least forty years of age, and h
a judge of a court of record or engaged
Philippines.

(2) The Batasang Pambansa sha
of judges of inferior courts, but no per
thereof unless he is a natural-born citi
member of the Philippine Bar.

SEC. 4. The Members of the S
inferior courts shall be appointed by the

SEC. 5. The Supreme Court sha

(1) Exercise original jurisdiction
sadors, other public ministers, and co
certiorari, prohibition, *mandamus, quo*

(2) Review and revise, reverse,
certiorari, as the law or the Rules of C
ments and decrees of inferior courts in—

(a) All cases in which the
any treaty, executive agreement,
order or regulation is in question.

(b) All cases involving the
assessment, or toll, or any penalty

(c) All cases in which the
court is in issue.

(d) All criminal cases in
death or life imprisonment.

(e) All cases in which only
involved.

(3) Assign temporarily judges o
tions as public interest may require.
shall not last longer than six months
judge concerned.

(4) Order a change of venue or
carriage of justice.

ncerning pleading, practice, and pro-
ission to the practice of law, and the
however, may be repealed, altered, or
g Pambansa. Such rules shall provide
procedure for the speedy disposition of
courts of the same grade, and shall not
ubstantive rights.

and employees in accordance with the

Court shall have administrative su-
e personnel thereof.

of the Supreme Court and judges of
during good behavior until they reach
ecome incapacitated to discharge the
preme Court shall have the power to
urts, and, by a vote of at least eight
l.

s of the Supreme Court in any case
banc or in division shall be reached in
assigned to a member for the writing
y Member dissenting from a decision
dissent. The same requirements shall
giate courts.

of a court of record shall clearly and
e law on which it is based. The Rules
ulgation of minute resolutions.

the Chief Justice and of the Associate
, and of judges of inferior courts, shall
ot be decreased during their continu-
sang Pambansa shall provide other-
ceive an annual salary of seventy-five
ciate Justice, sixty thousand pesos.

e effectivity of this Constitution, the
a case or matter shall be decided or
submission, shall be eighteen months
nless reduced by the Supreme Court,
ollegiate courts, and three months for

Supreme Court and other collegiate
plicable maximum period shall have

lapsed without the rendition of the corre
tion because the necessary vote cannot
or resolution appealed from shall be
those cases where a qualified majority
from judgments of conviction in crimina
cial civil actions and proceedings for *h*
such cases shall be deemed dismissed
effect signed by the Chief Magistrate of
a copy thereof attached to the record of t

SEC. 12. The Supreme Court sh
the opening of each regular session
submit to the President, the Prime
Pambansa an annual report on the ope
Judiciary.

Article XI

LOCAL GOVERN

SECTION 1. The territorial and
Philippines are the provinces, cities, mu

SEC. 2. The Batasang Pambans
ment code which may not thereafter be
ity vote of all its Members, defining a
countable local government structure
recall, allocating among the different
powers, responsibilities, and resources,
cations, election and removal, term, sal
duties of local officials, and all other m
zation and operation of the local units.
existing form of local government shall
by a majority of the votes cast in a plebi

SEC. 3. No province, city, mun
created, divided, merged, abolished, o
altered, except in accordance with the
local government code, and subject to t
the votes cast in a plebiscite in the unit

SEC. 4. (1) Provinces with res
municipalities and cities and municipa
nent barrios, shall ensure that the acts
within the scope of their assigned p

d by standards established in the local
ependent of the province.

units may group themselves, or con-
forts, services, and resources for pur-
hem.

ernment unit shall have the power to
nue and to levy taxes, subject to such
l by law.

rticle XII

TIONAL COMMISSIONS

ON PROVISIONS

stitutional Commissions shall be the
e Commission on Elections, and the

ise provided by law, the Chairman
Constitutional Commission shall re-
y thousand pesos and fifty thousand
ll not be decreased during their con-

a Constitutional Commission shall,
gage in the practice of any profession
business, or be financially interested
contract with, or in any franchise or
rnment or any subdivision, agency, or
ding government-owned or controlled

onal Commissions shall appoint their
rdance with the Civil Service Law.

ERVICE COMMISSION

Civil Service embraces every branch,
mentality of the Government, includ-
or controlled corporation. It shall be
nt Civil Service Commission composed
missioners, who shall be natural-born
, at the time of their appointment, are

must not have been candidates for any
tion immediately preceding their appo
the Commissioners shall be appointed l
seven years without reappointment. Of
pointed, one shall hold office for seven
and the third for three years. Appointn
only for the unexpired portion of the tern

(2) The Commission shall, subje
be provided by law, establish a career s
promote morale, efficiency, and integrit

SEC. 2. Appointments in the Ci
which are policy-determining, primaril
nical in nature, shall be made only acco
be determined as far as practicable by c

SEC. 3. No officer or employee
suspended or dismissed except for caus

SEC. 4. (1) Unless otherwise
official shall be eligible for appointm
during his tenure, except as Member of

(2) No candidate who lost in an
appointment or reappointment to any o
any government-owned or controlled c
following such election.

SEC. 5. No officer or employee i
members of the armed forces, shall en
any partisan political activity or take p
vote.

SEC. 6. The Batasang Pamban
dardization of compensation of govern
including those in government-owned
taking into account the nature of the r
and the qualifications required for, the

C. THE COMMISSION C

SECTION 1. (1) There shall b
sion on Elections composed of a Chairm
who shall be natural-born citizens of
time of their appointment, at least thir
ers of a college degree. However, a ma

of the Philippine Bar who have been
for at least ten years.

the Commissioners shall be appointed
f seven years without reappointment.
ppointed, three shall hold office for
rs, and the last three for three years.
hall be only for the unexpired portion

on on Elections shall have the follow-

ster all laws relative to the conduct of

f all contests relating to the election,
all Members of the Batasang Pam-
nd city officials.

nvolving the right to vote, administra-
ns, including the determination of the
g places, the appointment of election
e registration of voters.

onsent or at the instance of the Presi-
es and instrumentalities of the Gov-
d Forces of the Philippines, for the
ly, and honest elections.

t political parties subject to the provi-

Batasang Pambansa effective meas-
nses and prohibit all forms of election
tical opportunism, guest or nuisance
s.

dent, the Prime Minister, and the Ba-
the conduct and manner of each elec-

unctions as may be provided by law.

on on Elections may sit *en banc* or in
cases may be heard and decided by
lving Members of the Batasang Pam-
nd decided *en banc*. Unless otherwise
cases shall be decided within ninety
mission for decision.

SEC. 4. The Commission may
the removal of, or any other disciplina
or employee it has deputized, for violati
dience to, its decision, order or directive

SEC. 5. The enjoyment or util
permits for the operation of transportat
media of communication or informatio
leges, or concessions granted by the Gov
agency, or instrumentality thereof, inclu
or controlled corporation, may be sup
Commission during the election period
free, orderly, and honest elections.

SEC. 6. Unless otherwise fixed
cases, the election period shall commen
of election and shall end thirty days the

SEC. 7. No pardon, parole, or su
lation of the law or rules and regulatio
be granted without the recommendation

SEC. 8. The political parties wh
President have obtained the first and
votes in the last preceding election for
tution shall be entitled to accreditation
ten percent of the total number of vote
candidates for President obtaining the
do not each obtain at least ten percent
cast, or in case no election for President
the Commission on Elections shall gr
parties as may be provided by law.

No religious sect shall be registere
political party which seeks to achieve it
be entitled to accreditation.

SEC. 9. (1) *Bona fide* candidat
be free from any form of harassment an

Accredited political parties shall
tration board, board of election inspect
other similar bodies as may be provided

Accredited political parties may b
or privileges.

SEC. 10. No elective public offic
party affiliation during his term of offi

elective office may change his political party affiliation within six months immediately preceding or following an election, unless otherwise provided by law.

SEC. 11. Any decision, order, or ruling of the Commission may be brought to the Supreme Court on *certiorari* by the aggrieved party within thirty days from his receipt of a copy thereof.

APPENDI

UNIVERSAL DECLARATION

PREAMBI

WHEREAS recognition of the inh
inalienable rights of the members of t
dation of freedom, justice and peace in

WHEREAS disregard and conten
sulted in barbarous acts which have ou
kind, and the advent of a world in wh
freedom of speech and belief and free
been proclaimed as the highest aspirati

WHEREAS it is essential, if man
recourse, as a last resort, to rebellion
sion, that human rights should be prot

WHEREAS it is essential to
friendly relations between nations,

WHEREAS the peoples of the
Charter reaffirmed their faith in fund
dignity and worth of the human pers
men and women and have determine
and better standards of life in larger fr

WHEREAS Member States h
achieve, in cooperation with the Unit
universal respect for and observance
mental freedoms.

WHEREAS a common understan
doms is of the greatest importance f
pledge.

NOW, THEREFORE, The Gene
Universal Declaration of Human Righ
achievement for all peoples and all n
individual and every organ of society,
stantly in mind, shall strive by teachi

eedoms and by progressive measures,
secure their universal and effective
both among the peoples of Member
the peoples of territories under their

born free and equal in dignity and
reason and conscience and should act
of brotherhood.

to all the rights and freedoms set
out distinction of any kind, such as
ligion, political or other opinion, na-
, birth or other status.

inction shall be made on the basis of
nternational status of the country or
belongs, whether it be independent,
nder any other limitation of sover-

o life, liberty and the security of per-

slavery or servitude; slavery and the
in all their forms.

ed to torture or to cruel, inhuman or
ment.

o recognition everywhere as a person

Article 7

All are equal before the law and
crimination to equal protection of the
protection against any discrimination i
and against any incitement to such disc

Article 8

Everyone has the right to an eff
tent national tribunals for acts viola
granted him by the constitution or by la

Article 9

No one shall be subjected to arbi
ile.

Article 10

Everyone is entitled in full equal
ing by an independent and impartial t
of his rights and obligations and of any

Article 11

1. Everyone charged with a pen
presumed innocent until proved guilty
trial at which he has had all the gua
fense.

2. No one shall be held guilty of
of any act or omission which did no
under national or international law, a
mitted. Nor shall a heavier penalty b
was applicable at the time the penal off

Article 12

No one shall be subjected to ar
privacy, family, home or corresponde
honour and reputation. Everyone has
the law against such interference or att

ght to freedom of movement and resi-
h state.

ht to leave any country, including his
ry.

ht to seek and to enjoy in other coun-

e invoked in the case of prosecutions
litical crimes or from acts contrary to
the United Nations.

nt to a nationality.

trarily deprived of his nationality nor
nationality.

ull age, without any limitation due to
ave the right to marry and to found a
equal rights as to marriage, during
.

tered into only with the free and full
es.

tural and fundamental group unit of
tion by society and the State.

ht to own property alone as well as in

rarily deprived of his property.

o freedom of thought, conscience and
edom to change his religion or belief,

and freedom, either alone or in commu
or private, to manifest his religion or
worship and observance.

Article 19

Everyone has the right to freedo
this right includes freedom to hold opin
to seek, receive and impart informatio
dia and regardless of frontiers.

Article 20

1. Everyone has the right to f
and association.

2. No one may be compelled to b

Article 21

1. Everyone has the right to ta
his country, directly or through freely c

2. Everyone has the right of eq
his country.

3. The will of the people shall b
government; this will shall be expres
elections which shall be by universal a
held by secret vote or by equivalent fre

Article 22

Everyone, as a member of society
rity and is entitled to realization, thro
national cooperation and in accordanc
resources of each State, of the econom
indispensable for his dignity and the
sonality.

Article 23

1. Everyone has the right to w
ment, to just and favourable conditio
against unemployment.

ny discrimination, has the right to

has the right to just and favourable
self and his family an existence wor-
upplemented, if necessary, by other

nt to form and to join trade unions for

o rest and leisure, including reason-
s and periodic holidays with pay.

nt to a standard of living adequate for
himself and of his family, including
edical care and necessary social ser-
in the event of unemployment, sick-
ld age or other lack of livelihood in
ol.

lhood are entitled to special care and
ner born in or out of wedlock, shall
n.

ght to education. Education shall be
and fundamental stages. Elementary
Technical and professional education
able and higher education shall be
basis of merit.

rected to the full development of the
strengthening of respect for human
ms. It shall promote understanding,
ong all nations, racial or religious
ctivities of the United Nations for the

right to choose the kind of education
dren.

Article 27

1. Everyone has the right to par
the community, to enjoy the arts and t
ment and its benefits.

2. Everyone has the right to the
material interests resulting from any
production of which he is the author.

Article 28

Everyone is entitled to a social
which the rights and freedoms set fort
fully realized.

Article 29

1. Everyone has duties to the co
free and full development of his persona

2. In the exercise of his rights a
be subject only to such limitations as a
for the purpose of securing due recognit
and freedoms of others and of meeti
morality, public order and the general
ety.

3. These rights and freedoms n
contrary to the purposes and principles

Article 30

Nothing in this declaration may b
any State, group or person any right to
perform any act aimed at the destruct
freedoms set forth herein.

——o0o——